

EMPLOYMENT APPEALS TRIBUNAL

CLAIM of:

CASE NO.

Employee

UD1145/2007

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. M. Kennedy
Mr. P. Woods

heard this claim at Dublin on 7th April 2007

Representation:

Claimant: In person

Respondent: Mr. Karl Hahahoe BL instructed by Mr. Ross Phillips of H.G. Donnelly & Son,
5 Duke Street, Athy, Co. Kildare.

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant gave evidence. He started working for the respondent on 2nd February 2006. He worked 6 or 7 jobs a month for an average of 9 or 10 hours per job. He worked on the upstairs bar pouring wine and serving food. The number of staff on duty depended on the number of people attending the function.

The claimant worked 37 hours a week at his other job. When there was a function at the respondent's premises, the claimant was contacted by the function manager and offered work. He was under no obligation to accept any work offered. The function manager kept a record of the hours he worked and at the end of the month he was paid by cheque. He did not receive holiday pay.

On 26th July 2007 he was serving drinks when he ran out of glasses. He went down stairs and was polishing cut glass whiskey tumblers when the respondent appeared and started shouting at him. The claimant shouted back. The respondent told him to get out and insisted that he leave by the kitchen door. He did not work for the respondent again.

The claimant stated that he had never refused to wipe up a spillage. Also he never said that it was not his job to do pictures.

During the time of his employment with the respondent he had worked at one or two functions for other employers. Now he has changed jobs and did not work at functions.

Respondent's Case

The respondent gave evidence. He owned the premises. Since he purchased it, he had restored the house and rents it out for private functions. There are 3 office staff members. Functions are arranged months in advance. Food is provided and delivered by caterers as the premises has only finishing facilities.

The function manager arranges the waiters and assigns tasks. Some staff members are more casual than others. Staff members are paid through the books. However the claimant, despite several requests, did not supply his PPS number.

On the evening of the incident the respondent asked the claimant to clean up a spillage. He refused and was asked to leave. On a previous occasion the claimant refused to attend to a fallen picture and was rude to a guest.

The function manager gave evidence. He runs the functions at the house. He schedules staff from a list of about ten. Some work more than others. His job with the respondent was not his main job.

A waiter gave evidence. He heard the respondent tell the claimant to leave the house.

Determination

The Tribunal finds that the claimant was a regular part-time employee of the respondent. He was working under a contract of service. The claimant was dismissed without recourse to any disciplinary procedure. The Tribunal finds that the claimant was unfairly dismissed. Accordingly his claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds and he is awarded €800.00 compensation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)