

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD85/2008

Against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Ms A. Gaule
Mr. J. Dorney

heard this claim at Dublin on 14th May 2008

Representation:

Claimant(s): The claimant in person

Respondent(s): Mr David Keane, IBEC Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant told the Tribunal that he commenced employment with the respondent on 5 April 2006. He was asked by the food and beverage manager to work with the respondent and they had previously worked together in other hotels. The claimant was appointed food and beverage supervisor on 4 May 2007 and he was also the health and safety representative. A cash float was in operation. The claimant reported for work on 24 October 2007 and the food and beverage manager raised an issue. He went to the accounts office with cash and asked COD the accounts manager if his cash drop from the previous evening had been checked. The front office manager and general manager came to the accounts office and asked him questions regarding money going missing. He was then brought to the general manager's office by the front office manager and he told them that he had completed his cash drop properly. It was clearly implied to him that he had committed theft. On returning to the food and beverage office the general manager told the claimant to do the honourable thing and he forced the claimant to resign.

In cross-examination the claimant stated that it was implied by the general manager that he was accused of theft and he felt that this was the reason why he was summoned to the office. He was aware of the cash handling procedure. Asked that he had the right to accuse him he replied that he had every right to investigate the matter. He felt that he was been asked to leave and he resigned. He felt that he would not be able to continue in employment and he was very upset. Asked what was specifically said to him in relation to theft he replied that he was asked to go to the office and account for money in the safe. There was no money missing and he felt that he was accused of taking money. According to the respondent the money received did not add up and the claimant put the money in the safe. It was definitely mentioned to the claimant that there was not enough cash in the envelope and that the cash drops were down. The claimant signed off on cash that was dropped. His manager suggested that he should write a letter. He could not get his P45 He obtained alternative employment on 6 December but he left after a few days. The claimant is currently unemployed. He has submitted several applications in an attempt to gain employment. Asked that the food and beverage manager told him to terminate his employment he replied that he was told to do the honourable thing. Asked if there was an occasion when money was missing he replied someone would say that the cash drop was reduced by €20. The money was in the safe for the cash flow. The claimant or another employees counted the money sometimes in the presence of other employees or by himself.

Respondent's Case.

The general manager told the Tribunal that she held this position for two years. The claimant was appointed food and beverage assistant in April 2006 and was promoted to food and beverage supervisor in May 2007. The cash handling procedure was that that the food and beverage department printed out details of till receipts at the end of every shift. The cash was counted in the food and beverage office. Till receipts were placed in an envelope along with the cheques and that was the same for all departments. COD was the accounts manager. The claimant was asked to go to the cash office as the cash was up by €150 and she wanted to find out why the cash print out was up by €150. The claimant was very vague and he did not pay much attention; he was not able to explain it. The claimant was not accused of theft. Some days later the claimant submitted a letter of resignation. She was very surprised with the contents of the letter, the claimant had an opportunity to discuss the issues and he did not highlight any.

In cross-examination she stated that she did not know if the claimant was asked to leave. The €150 that was in an envelope should have been in the safe. She was not aware of how the claimant felt and that there was a suggestion of theft.

The food and beverages manager told the Tribunal that he worked with the claimant and brought him to the respondent in April 2006. He was the claimant's manager. On 24 October he knew it was going to be a very busy day. He reported for work and the place was in a state of chaos. The claimant could not be found. He found the claimant in the office staring into space and he was wearing the same clothes as he had worn on the previous shift. He asked the claimant to the office and he reprimanded him for the place being in disarray. The claimant asked him if he wanted him to do the honourable thing and resign and he accepted the resignation. He did not ask for the claimant's resignation but he accepted his resignation. He worked with the claimant for many years and the claimant had let him down. The witness was furious and the claimant realised that he did not meet his expectations. He was not aware of the conversation that took place in the cash office. He did not suggest that the claimant should resign.

In cross-examination he stated that in October the respondent was busy with Christmas parties. He

agreed that the claimant had other duties and that he did not disagree that the claimant drew up a health and safety document for the hotel. He did not have a conversation relating to money with the claimant. A similar incident occurred with the witness the previous week when the claimant reported for work and he told the claimant not to come to work in a similar state. Asked if he had asked the claimant why his work had gone downhill he replied that he spoke to the claimant on a personal level. This was the ultimate let down by the claimant. He did not give the claimant a verbal warning and he did not dismiss the claimant.

Determination

As this was a case of constructive dismissal the onus was on the claimant to show that he was dismissed. The claimant failed to show that he was constructively dismissed and his claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

