

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:  
Employee

CASE NO. UD201/2007

against  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M Gilvarry

Members: Mr D Morrison  
Ms R Kerrigan

heard this claim at Letterkenny on 16th April 2008

Representation:

Claimant: Mr. Gordon Curley, O'Gorman Cunningham & Co Solicitors,  
16 Upper Main Street, Letterkenny, Co. Donegal

Respondent: Ms Nadine Coyle, Gary Clarke Solicitors,  
McKendrick Place, Pearse Road, Letterkenny

#### **The determination of the Tribunal was as follows:**

The claimant and four others were dismissed on 5<sup>th</sup> November 2006 for Gross Misconduct following a report to the manager that they had been hitting each other with a wet tea towel while at work in the fast food restaurant.

#### **Respondent's Case:**

On 1<sup>st</sup> November the manager of the respondent company was notified of an incident the previous night where employees had been hitting each other with a wet tea towel. The manager was concerned about the incident as it was a serious health and safety issue due to the number of hot appliances in the vicinity including oil fryers and toasters; he also considered that the actions of the staff were malicious. The manager came into the restaurant the same day to begin an investigation and asked those involved to bring him a statement the following Sunday. He also sought statements from other staff working on the shift concerned. Three of the employees, including the claimant, were suspended by the manager, while one was sent home from the shift he was on that day by a shift manager.

The following Sunday the manager read the statements submitted and decided to dismiss the claimant, and the other employees involved, on foot of what was contained in the statements. He then called the claimant and other employees concerned, one by one, into his office. He asked each of them to bring another staff member with them as a witness. He pointed out to the claimant the summary dismissal section of the staff handbook and that assaulting or injuring a member of staff or a customer would result in summary dismissal. The manager dismissed the claimant with immediate effect. The claimant was informed that he could appeal the dismissal within 14 days. This was extended by a further three days by the owner of the restaurant. The claimant did not avail of the appeals process. The manager considered that the dismissal was fair.

**Claimant's Case:**

The claimant was employed part-time as a crew trainer for two years and eight months earning gross €90 per week. There had been previous incidents of playing with the tea-towels but nothing had ever been said. On 1<sup>st</sup> November the manager approached him and asked if he had been involved, he agreed he had been. The claimant was suspended without pay and told to come in on Sunday and bring a statement with him. On Sunday the claimant came to work the 3-10pm shift. He was at the counter when a shift manager told him to take a witness with him and go to the office to speak to the manager. The manager explained the situation and pointed out the summary dismissal section of the employee handbook and said he had to dismiss the claimant.

**Determination:**

There was no proper disciplinary procedure and the investigator also carried out the dismissals. There was no proper disciplinary hearing. The Tribunal find that the dismissal was unfair due to a breach of Section 6 of the Unfair Dismissals Acts, 1977 To 2001 for lack of procedure, and therefore, the claim for unfair dismissal succeeds. However, it has also been taken into account that the claimant contributed substantially to his dismissal and, accordingly, the Tribunal award the claimant €170 compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)