

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO. UD204/2007

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 5th 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 1st 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 employees were suspended by the manager and the claimant 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 as a crew-trainer full-time earning gross €275 per week. He considered the incidents with the tea towel to be just messing and was never more than once or twice a week. It had always happened at the back of the kitchen away from hot appliances. The claimant arrived at the restaurant on 2nd November to leave his uniform in for later to discover that two of his colleagues had been suspended. The shift manager then told him he was suspended for flicking tea cloths. Later that evening he received a call from the manager telling him he was suspended and to bring a statement with him the following Sunday. The following day a shift manager rang and asked him to work that day, which he did. The claimant came in on Sunday to work his 4pm to close shift and gave his statement to the manager. Around 5.30pm the manager called him into the office and told him to bring a witness. The manager pointed out the summary dismissal section of the employee handbook and told him he was being dismissed for assault. No evidence was put to the employee, the manager read out some extracts of the statements he had received.

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 substantially contributed to his dismissal and, accordingly, the Tribunal award the claimant €235.00 compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

