

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO. UD202/2007

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 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 a fulltime shift manager and had been working with the company for five and a half years, he had been earning gross €375 per week. The claimant was shift manager that night and viewed the wet cloth incident as a bit of fun between friends, including himself, when it was quiet. It had been going on for the previous four to six weeks and even as far back as one to two years previously between other staff. There was no maliciousness involved. It always occurred at the back of the restaurant away from any dangerous appliances. On the 2nd November he was called in by the manager and asked if there had been an assault on the night in question to which he answered no, that nothing stood out and that no one had reported an assault. He was asked to bring a statement on Sunday and went back to work. He worked at the restaurant on Friday, Saturday and Sunday. On Sunday the manager came to him, told him to bring a witness and come to a meeting. At the meeting the manager told him he was being dismissed for assault. The claimant did not appeal the decision as he felt it would put him in a lesser position if he continued to work with the company. The claimant contested that he had denied the incident to his manager previously, but rather he had said there had been no assault.

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 €850.00 compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)