

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO. UD203/2007

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 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 worked part-time as a crew-member at the restaurant since August 2005, receiving gross €140 per week. On the night in question he and his friends were having a bit a fun using a wet cloth to whip each other. There was no maliciousness involved and it was away from hot appliances, down the back of the restaurant. It had been going on for the previous 6 to 8 weeks. The manager approached him while he was working on the 2<sup>nd</sup> November and asked him what had happened on the night in question. The claimant told the manager that they had been having a bit of banter between themselves. The manager asked him to bring a statement on Sunday and then the claimant went back to work. He wasn't suspended and was asked by a shift manager to work on Friday and Sunday, which he did. He contested the manager's assertion that he had denied any involvement when asked and that that was why he hadn't been suspended. On Sunday he gave his statement to his manager while he was working his shift. He was later asked to come to the office and bring another staff member as a witness. The manager pointed out the section of the employee handbook regarding summary dismissal and told him he was being dismissed for gross misconduct. The claimant walked out of the office as he was angry that he had been given no warnings and had been dismissed in the middle of a shift he had been asked to cover.

**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 succeed. However, it has also been taken into account that the claimant substantially contributed to his dismissal and, accordingly, the Tribunal award the claimant €600.00 compensation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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