

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

MN880/2007
UD1133/2007

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr K. Buckley

Members: Mr. M. Forde
Ms H. Kelleher

heard this claim at Cork on 15th July 2008

Representation:

Claimant : Mr. Eugene Murphy, Murphy English & Co., Solicitors,
"Sunville", Cork Road, Carrigaline, Co. Cork

Respondent: Mr David Gaffney, Coakley Moloney, Solicitors, 49 South
Mall, Cork

The determination of the Tribunal was as follows:

Respondent's case:

The respondent has been self-employed since 2000 having taken over the butcher business from his father and uncle. His family have been butchers for seventy-six years. He supplies meat locally and this includes some restaurants. The claimant commenced his employment in November 2005. The terms and conditions of employment were shown to the Tribunal and in particular the policy regarding purchases of meat by employees. It stated that any meat being purchased by an employee "must be purchased through the proprietor or other butcher on duty". The claimant signed his contract on 1st December 2005.

On 4th March 2006 he had cause to discipline the claimant. An ex-employee was aware that meat was being taken at lunchtime when the witness had a day off. The claimant's wife was coming into

the shop during this other employee's lunch hour and meat was being taken. Witness decided to see for himself. He parked on the main street and noticed the claimant's wife coming in and the claimant giving her meat. This was a family member and the claimant should have made the respondent or the butcher on duty aware. This happened on a few occasions. Witness told the claimant this was against company policy and he stated that it would not happen again. On 12th March 2007 the claimant took a cold joint of meat and he told son of witness to tell his father he was not "f--king" paying for the meat. When the claimant was back at work four days later witness confronted him and said if it happened again he would let him go. The response from the claimant was "keep your f--king meat". On 14th August 2007 the claimant purchased meat through witness and the meat was in the fridge all day. Later that day his son noticed other items in the bag, i.e. rashers and sausages which could be seen through the bag. The claimant was not reprimanded then but witness installed CCTV on the premises.

On Saturday 29th September 2007 witness went home for an hour from 4 to 5pm. The claimant told him he was doing a delivery to a lady on his way home. There were two parcels on the counter and he presumed that they were for the lady. Later that evening the claimant was collecting his belongings and said he was going home for the weekend. He went out via the shop and a son of witness noticed the claimant take a bag of meat and put it in a bag with his overalls. The son asked his father if the claimant had paid for the meat. When witness checked the CCTV he saw the claimant putting the meat in his bag. Witness was furious and he rang the claimant telling him he had seen what happened and asked him twice if he had taken the meat for the lady by mistake and he said that he had not. On asking the third time he said that he took the bag of meat and forgot to pay but that he would pay on Monday. The claimant was told that this was not acceptable and that he would speak to him on the Monday. The claimant would have had the opportunity to tell the sons of the respondent or witness himself who was back in the shop between 5 and 6pm.

On Monday 1st October 2007 witness was at work at 8am. The claimant starts at 8.30am and shortly after he came into work and he had dealt with a customer, he said to witness, "don't you start on me, I've had shit weekend" and followed on by saying that his wife would not continue to wash the overalls. The employees got two overalls and there was a policy that each one would wash their own overalls. The claimant was aggressive and heated. Witness asked him if he realised that he had broken company policy yet again and asked how many times did he have to remind him. The claimant asked if that meant he had been fired and witness stated that he had no choice in the circumstances. The claimant stormed off. The claimant was paid a weeks notice and was issued with a letter of dismissal. Witness had one full time employee and his two sons work on a part-time basis. The claimant was dismissed for going against company policy. He had been given several reprimands but showed no remorse.

In cross-examination witness stated that in relation to the incident on 4th March 2006 the claimant said he was sorry and admitted he was wrong. It was not a regular occurrence that the claimant was allowed to take meat for free.

In answer to questions from Tribunal members witness stated that he gave the claimant bonuses and a good discount on meat. He also gave him meat at Christmas and Easter.

The respondent's son gave evidence that he has been working with his father in the business, mainly at weekends, since he was ten years of age. The practice in relation to taking meat was to tell us. On 12th March 2006 he and his brother were in the shop and the claimant went to the fridge and took out a piece of beef and said to him he was not going to pay "your f--king father---" as he the claimant "works hard enough". He left with the meat in the bag and he

subsequently told his father what had happened. On 14th August 2006 the claimant took a piece of roast beef and asked his brother what he owed and he paid for the piece of meat. Later that day when the claimant was going home witness could see rashers and sausages also in the bag and he had put his overalls on the top of the bag. He told his father that the claimant had paid for the beef but not the rashers and sausages. On another occasion in 2007 he could see a slipper of stake in a bag and the claimant put the overalls on top of the bag. Other staff would tell them if they were taking meat.

Another son of the respondent told the Tribunal that the practice was to tell his father if an employee was taking meat and if his father was not there to tell himself or his brother. This was what other employees did. He personally never takes meat. On 29th September 2007 at 4pm his father left and a lady came in and requested her meat to be delivered. Witness put her order in the cabinet and at 4.30pm he saw the claimant cutting a t-bone steak and it was placed beside the order for the lady. Witness assumed this order was for someone else. At 5.45pm witness took out the order for the lady and placed it on the block. He then saw the claimant take the t-bone stake and place it beside the lady's order. As the claimant was leaving he saw him take the t-bone and place it in his bag. Having told his father he looked at the CCTV and he could hear his father telephone the claimant. His father was not shouting at the claimant.

In cross-examination witness said that when the claimant took the t-bone and placed it on the block, it was disguised behind the lady's order. The claimant was not aware that witness was in the vicinity.

Claimant's case:

The claimant has been a butcher since the age of fourteen. He commenced his employment with the respondent in December 2005. The respondent was nice enough most of the time but once or twice a week he would start giving out. There was another butcher there when he started and witness was aware of the CCTV cameras on the premises. There was a practice that an employee got 10% off the retail price of the meat but 99% of the time the respondent gave the meat for free. This would not be fresh meat. One time he took corned-beef that had gone off and he said to the sons that he would not be paying the full price. When he came in the following Monday the respondent started shouting and then said okay and they were friends again. He was never reprimanded and was never told that his job was at risk.

On 4th March 2006 the claimant's wife came into the shop. They live in the village and his wife works in Dunnes Stores. She could have a bag with her and occasionally she bought meat and paid for it and the respondent would say had he given her the 10% off. She would pass by the respondent's premises once or twice a day and would call in to say hello. The respondent never said she should not be calling in. On 14th August 2007 he paid the respondent for all the meat he took. Saturday 29th September 2007 was a busy enough day and the respondent and his two sons were there. He got an order ready for a lady and he took an "oldish" t-bone steak. The respondent came back at approximately 5.45. The claimant put the t-bone steak in the bag and felt he had nothing to hide, the CCTV was there. He was in a rush to go home as he was watching the "x-factor" on television. He put his bag in the kitchen. The respondent rang and asked if he had taken meat from the shop and at first he said that he did not take meat and then said sorry he had forgotten about the t-bone stake. The claimant said he would come down straight away and pay for it. His wife had said maybe he should not be bringing his overalls home and then he could not be accused by the respondent.

On the following Monday he was dealing with a customer and the respondent jumped down his throat and the claimant said he forgot to pay and he took €20 out of his pocket. The respondent said he did not want the money and the claimant told him that his wife did not want him bringing home the overalls. The claimant asked was he sacked and he left it at that. He was never told he would be sacked if he took meat. He never got any warnings and there were no disciplinary procedures outlined to him. The claimant then gave evidence as to his efforts to get alternative work.

In cross-examination witness said that he did not think he was doing anything wrong and he never stole anything in his life. When asked what was “oldish” meat, he said it was not gone off but ready to go off.

Determination:

Having given due consideration to the evidence on both sides the Tribunal prefer the evidence of the respondent. The claimant admitted he took meat without paying for it. The respondent said that he gave bonuses and meat for free and in the terms and conditions of employment it stated that any products being purchased by an employee “must be purchased through the proprietor or other butcher on duty”. The claim under the Unfair Dismissals Acts 1977 to 2001 is dismissed. No award is being made under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 as the claimant was paid one week’s notice on termination of his employment.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

