

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

UD962/2007

against

2 Employers

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr R. Murphy
Mr J. Le Cumbre

heard this claim at Tullamore on 28th August 2008
and 24th November 2008

Representation:

Claimant(s) : Ms. Karen Nolan BL instructed by:
Fagan Bergin, Solicitors, 57 Parnell Square West, Dublin 1

Respondent(s) : Hoey & Denning, Solicitors, High Street, Tullamore, Co. Offaly

The determination of the Tribunal was as follows:-

Respondent's Case:

On the first day of the hearing the Managing Director gave evidence. He explained that the respondent company was a hotel with a staff of 200. The claimant was employed as a Security Officer.

He explained that their bar extension licence had to be renewed yearly in the District Court. In October 2006 an objection was made. The person who objected (hereafter known as Person A) told the Judge that his wife and himself were on the premises one evening. He stepped outside for a moment but when he went to re-enter the premises the claimant told him he could not enter as he felt Person A had too much drink taken. Person A contacted the Duty Manager (hereafter known as Person C) who instructed the claimant to let Person A back in. Person A re-entered but was very upset and soon left. Person A was a member of the leisure centre and demanded his membership fee back. It was refunded. The District Court Judge said that it was disgraceful behaviour and refused the licence. The witness told the Tribunal that this had very serious consequences for the respondent and some functions were cancelled. An appeal to the Circuit Court was allowed and the

licence was granted.

In February 2007 the claimant and two Gardaí were assaulted after a customer was refused entry to the premises. The case was brought before the same District Court Judge. The Judge demanded that the witness and the claimant come before him. He said that the claimant's employment should not continue. An extract from the local paper was read into evidence. The witness consulted his Human Resources representative and his legal team about the matter. He also spoke to the claimant about the matter and advised him to get legal advice. The claimant was suspended on full pay until the case in the District Court was completed. The Judge made it perfectly clear, if the claimant continued to be employed, the respondent's licence would not be renewed. The witness investigated the matter interviewing all staff present but they were mainly focused on defending the claimant's assault case.

He again discussed the matter with the claimant and offered him another position in maintenance but the claimant was not interested. The witness discussed the matter with his wife who was his partner in the company. He wrote to the claimant on June 23rd 2007 informing him that under the circumstances, and with no alternative, he would have to terminate his employment. The claimant was paid all monies due plus an ex-gratia payment. His legal fees were also paid.

On cross-examination he agreed that the respondent had employed the claimant for eighteen years. He explained that he had thirty-eight years experience in the business. He stated that the claimant had been a loyal employee but that there had been a number of difficulties in the past but that was "the nature of the business". On one occasion he had to remove the claimant from working on the door area for a number of months as a customer complained of the treatment given to his daughter one evening. After a number of months the claimant returned to his original position.

When put to him he said that it had been a very serious issue to have the licence refused. He explained that he had investigated the matter with Person A himself. The claimant told him that Person A had too much drink taken, had no identification on him and was very aggressive. He also spoke to Person C and the other security staff working that night. Person C told him Person A had not been aggressive, was not drunk but had "a few drinks on him". When asked about the Judge's comments, he replied that he was in a very tricky position. He told the Tribunal that he had thought of dismissing the claimant on that occasion but took his long service into account. There was no problem obtaining the licence the next time. The witness told the Tribunal that the claimant was fully aware of the consequences of the second incident brought to the Judge's attention. The claimant did a second door policy course and was aware that he may be moved from the door.

When asked, he said that the claimant had no written contract of employment. Terms and conditions of employment were explained to all staff and displayed in the staff room. The disciplinary procedure was also on display for staff.

Claimants's Case:

The claimant gave direct evidence that he worked on a part-time basis for the respondent company for nineteen years. He worked as a security person regularly on Friday, Saturday and Sunday nights each week. He started work at 9 p.m and finished at 3 a.m. He worked on the front door of the nightclub area and had a good working relationship with his employer.

In October 2006 an incident occurred involving the witness and a person identified previously as person A. The witness refused this person entry to the nightclub as he appeared to be under the

influence of too much alcohol. Person A was also refused entry by another manager on a different entrance to the nightclub on the same night. The decision of the witness to refuse entry to person A was supported by his employer.

The witness continued working for the respondent company after the incident, working over forty nights during the 2006 Christmas period. A second incident occurred on the night of the 21st January 2007 when a group of people approached the nightclub. The witness refused to allow one of the group to enter the nightclub as he appeared to have too much alcohol consumed. The group left the nightclub area and returned later on the same night. The witness was struck in the face by a member of the group and he then followed his assailant to the town square. He identified his assailant to the Gardai and this person was subsequently brought before the courts where criminal charges were taken against him on the 7th February 2007. The witness did not attend these court proceedings as he was not required to do so.

The District Court Judge hearing the case commented about the witness continuing in employment for the respondent company and extracts from a local paper relating to these court proceedings were read into evidence by the claimants legal representative. This court case was adjourned until the 25th May 2007.

The witness went on to give further evidence that, on the 8th February 2007, following the court case, his employer contacted him. His employer said to him "our hands are tied, where do we go from here". On the 15th February 2007 he was suspended on full pay by his employer pending a full investigation into the entire matter. The case came back before the court on the 25th May 2007 and an award of €300.00 was made to the witness as compensation for the assault made on him. This amount was paid to the witness but he was not afforded the opportunity in court to defend his actions or make his position clear. He was told by his employer that he had a poor chance of returning to work because of the comments made by the Judge.

In June 2007 the witness received his letter of dismissal. He was never called to a meeting to allow him give his version of events. There was no proper investigation carried out and he was never given a verbal warning or a formal written warning. He did not receive any terms and conditions of employment from his employer. He was not offered any other type of employment by his employer other than an offer of working on an agricultural show which occurred once a year. He received a payment of €2500.00 when he was dismissed and understood that this payment was part of what was owed to him by his employer. He has remained in full time employment in his day job but has not worked part-time in security work since his dismissal. He received €120.00 per night when working for the respondent company.

Under cross examination the witness agreed that his employer supported him after court proceedings in 2006. He denied that his position had become untenable in light of comments made by the Judge and felt that his employer could have found an alternative position for him. He presumes that he was dismissed by his employer as a result of the views of the court. He agreed that he did not make any suggestions to his employer about working in an alternative position, other than security. Since his dismissal he has looked for other part-time security work but has been unsuccessful. He has not looked for such work since the beginning of 2008. He gave further evidence that he did not receive payment for his final three weeks work and never received any holiday payments from his employer. He confirmed that he has always remained in other full-time employment during his years working part-time for the respondent.

In reply to questions from the Tribunal the witness confirmed that he did not receive a written

contract of employment and no discussions ever occurred about redundancy between himself and the respondent.

Determination:

The Tribunal have considered the evidence very fully in this matter and are of the unanimous view that the claimant was unfairly dismissed. There was no contract of employment and virtually no proper procedures of any kind were followed. The claimant had nineteen years service during which he had an unblemished record. In the circumstances it would appear that the possibilities of his obtaining future employment in the area in which he had been working for the respondent are extremely unlikely. Therefore the Tribunal are of the view that compensation, which is measured at €9,700.00 is awarded.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)