

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:
Employee

Case No.
UD381/2008
MN1070/2008

against
Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr M. Forde
Mr D. McEvoy

heard this claim at Cork on 15th October 2008

Representation:

Claimant: Ms. Tanya O'Mahony, Stokes & Co., Solicitors, 20 Grand Parade, Cork.

Respondent: Mr. Ken O'Sullivan B.L. instructed by Eugene Murphy & Co., Solicitors, Main Street, Carrigaline, Co. Cork

The determination of the Tribunal was as follows:

Respondent's Case:

The respondent is an organisation that was founded in 1999. The Project Leader (hereinafter PL) of the respondent gave evidence to the Tribunal. The claimant worked 10 -12 hours per week. The claimant was given a number of warnings throughout his employment for attending work under the influence of alcohol. The claimant also received verbal warnings for occasions he was late attending for work.

A written warning was issued to the claimant on the 9th March 2006. The written warning stated that the letter was, "*Following our meeting on 8th March 2006 in which we discussed your suspension for three days. You will be suspended for the 10th,11th and the 15th March. You will return to work on the 18th March. This is a final written warning and should this behaviour, as discussed in our meeting, occur again, you will be instantly dismissed.*" The claimant received this

warning for attending at work under the influence of alcohol.

The claimant was due to work on Christmas and St. Stephen's day 2007 and he was required to cook dinner on both days. On St. Stephen's day PL was present but the claimant had not attended for work. The claimant was paid up until the 6th January 2008 as part of the respondent's Christmas arrangements. PL was informed that the claimant had taken food that was bought for the St. Stephen's day dinner. PL telephoned the claimant. The claimant admitted to taking the item of food. PL dismissed the claimant as he considered the claimant's actions to be a breach of trust. PL stated there were previous incidences where food went missing.

During cross-examination it was put to PL that on the 7th March 2006 the claimant provided a medical certificate relating to an absence. PL denied this stating that if the claimant had provided a medical certificate to him it would be placed in the claimant's file.

It was put to PL that all the food was cooked on Christmas day. PL refuted this. It was put to PL that the claimant attended for work on St. Stephen's day to cook breakfast but left at 12pm. PL replied that he was in attendance at 11am and the claimant was not.

Claimant's Case:

The claimant refuted in his evidence that he had received verbal warnings throughout the course of his employment with the respondent. He did not attend work under the influence of alcohol. The first warning he received was the written warning on the 9th March 2006. In or around this date the claimant was absent and he attended work with a medical certificate to submit to his employer. He was asked to attend a meeting with PL and another individual. At the meeting the claimant was informed that he was being suspended for three days without pay for an unauthorised absence. The letter dated the 9th March 2006 followed this meeting.

The claimant attended for work on Christmas day 2007. He cooked all the food that day, as there was no dinner on St. Stephen's day. He did attend work on St. Stephen's day but only to cook breakfast. The claimant left his workplace at 12pm. Some time later he received a telephone call from PL. PL asked the claimant why he was not cooking the dinner. The claimant replied there was no dinner due for St. Stephen's day. PL told the claimant that he was no longer a member of the organisation. It was not explained to the claimant why he was dismissed.

Ms. M gave evidence to the Tribunal that she was in the claimant's presence on his return from work on Christmas day and he was not in possession of food.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing.

Both parties accepted in evidence that a telephone call took place between 11am and 12pm on St. Stephen's Day, between the claimant and the respondent's Project Leader regarding the attendance of the claimant for dinner preparation on the day and also the question of food for the dinner which was missing. The Tribunal had serious difficulty accepting that no dinner was necessary on St. Stephen's Day. Evidence from the respondent regarding the missing food was disputed by the claimant. However, in all the circumstances the Tribunal accepts the evidence of the respondent concerning the issue of the dinner on St. Stephen's Day.

Evidence was advanced by the respondent of a number of verbal warnings and one final written warning on the 9th March 2006 clearly indicating to the Tribunal that disciplinary issues had previously arisen.

Arising from the issue of the 26th December 2007 the Tribunal accepts that the evidence put forward constitutes gross misconduct on the part of the claimant. The Tribunal finds that the dismissal was fair in all the circumstances. The claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)