

EMPLOYMENT APPEALS TRIBUNAL

Claims of:
Employee

Case No.
UD427/2008
MN387/2008
WT180/2008

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Ms M. Sweeney
Ms. P. Doyle

heard this claim at Clonmel on 1st December 2008

Representation:

Claimant:

Mr Michael Quirk, Michael J O'N Quirk & Co, Solicitor, Main Street,
Carrick-On-Suir, Co Tipperary

Respondent: In Person

The determination of the Tribunal was as follows:

Dismissal as a fact was in dispute between the parties.

Respondent's Case:

The respondent gave evidence to the Tribunal. The claimant was the front of house manager for the respondent's restaurant. On the 14th February 2008 the respondent requested a meeting with the claimant and her colleague. A matter had been brought to the respondent's attention. Another individual told the respondent that the claimant was giving food for free instead of the agreed 20% discount. The respondent held the meeting of the 14 February 2008 with the intention of investigating this matter. The respondent's investigation was truncated by virtue of

the fact that the claimant admitted at the meeting that she had given food for free to staff. The claimant also admitted that there were other times when she charged only token amounts for the food. The claimant said she started this practice in January 2008 to encourage the staff of the centre to eat in the restaurant. The respondent considered the claimant's actions to be gross misconduct and that the claimant's actions were a breach of trust.

The claimant asked the respondent if she was fired. The respondent replied that she needed to investigate the matter further. The claimant said she was going to resign. The respondent asked the claimant for her resignation in writing but she did not receive this. Approximately, 30 minutes after the meeting concluded the claimant returned the keys of the restaurant to the respondent. The claimant apologised to the respondent. The respondent paid the claimant one week's pay in lieu of notice. The respondent believed the claimant had voluntarily resigned from her employment.

Some weeks later the claimant asked the respondent to sign a form for a loan stating that she was made redundant. The respondent told the claimant she could not sign this form, as a redundancy situation had not existed in relation to her employment.

During cross-examination it was put to the respondent that there was a practice in the restaurant of giving free food in the form of coffee refills. The respondent replied that since her takeover of the restaurant on the 1st November 2007 such a practice did not exist. All staff are aware that they can avail of a 20% discount.

The respondent confirmed that her husband was also present at the meeting on the 14th February 2008. Her husband asked the claimant directly if she was giving food for free or for token amounts.

When the claimant admitted that she had given food for free and/or for token amounts the respondent felt that trust had broken down between them and that she could no longer employ the claimant. The claimant then decided to resign.

It was put to the respondent that she told the claimant if she did not resign, then she would be dismissed. The respondent stated that she told the claimant at the meeting that there was a breach of trust, which needed to be investigated. The claimant told the respondent that in those circumstances she would be resigning. The meeting with the claimant was accelerated by the claimant's admittance.

It was put to the respondent that on the 14th February 2008 the claimant was accused and then summarily dismissed. The respondent replied that the claimant was very insistent that she always charged for food. When the respondent asked the claimant what she charged the staff for food, the claimant replied €1 or €2 euro for a €12.95 dinner.

The respondent conceded that the claimant was owed five days pay for holidays under the Organisation of Working Time Act, 1997.

Claimant's Case:

Sometime after the respondent took over the restaurant on the 1st November 2007, the claimant was promoted to front floor manager and she operated the till. Her pay changed from an hourly rate to a salary. The claimant did not receive any warnings from the respondent prior to the 14th February 2008.

When the restaurant was very busy sometimes customers would sit down with their food and pay it

later. The claimant stated that it was possible on those days that some customers left without paying.

At the meeting on the 14th February 2008 both the respondent and her husband were present. The claimant told the respondent that sometimes when she was working at the till some customers approached her with dinners covered with tinfoil. When the customers told the claimant it was a child's portion the claimant did not check beneath the tinfoil but trusted the customer and charged them €6.95.

The respondent's husband was the person who spoke to the claimant at the meeting. The respondent's husband was very aggressive on the 14th February 2008. He told the claimant to resign or she would be sacked. He told the claimant that he had evidence on CCTV and documentation to prove his allegations. However, the claimant was not shown anything and there were no specific examples put to her. The claimant refuted the respondent's evidence that she had admitted at the meeting to charging token amounts for food or giving food for free. The claimant was shocked and left the meeting. She completed her duties and left the premises after handing back the keys to the respondent.

The claimant gave evidence of her loss and upset caused to her by the dismissal.

The claimant's colleague gave evidence to the Tribunal that she was also present at the meeting on the 14th February 2008. The claimant's colleague confirmed that the respondent's husband had told her and the claimant that he had evidence that they were giving food to customers for free. The respondent's husband was aggressive and told them to resign or be dismissed. The claimant's colleague confirmed that the claimant had not admitted at the meeting that she gave food for free. The respondent told them that she could not trust them anymore and wanted them to resign.

Determination

A conflict of evidence existed as to what happened on the 14th February 2008 but it is clear that it resulted in a disciplinary hearing leading to a termination of the claimant's employment and a breach of due process and procedures, which amounted to an unfair dismissal. The Tribunal awards the claimant compensation of €7,114.00 under the Unfair Dismissals Acts, 1977 to 2001.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, was withdrawn during the course of the hearing.

The respondent conceded at the hearing that the claimant has an outstanding entitlement to five days holidays under the Organisation of Working Time Act, 1997. Accordingly, the Tribunal awards the claimant €508.00 under this Act, being the equivalent of five working days.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)