

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD1180/2008

MN1089/2008

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: Ms N. O'Carroll-Kelly B L

Members: Mr M. Noone
Mr A. Butler

heard this claim at Wicklow on 22nd April 2009

Representation:

Claimant : Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

Respondent : Ms Linda Cronin B L instructed by
O'Doherty Warren & Associates, Solicitors, "Melrose",
Charlotte Row, Gorey, Co. Wexford

The determination of the Tribunal was as follows:

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 was withdrawn at the outset of this hearing.

Respondent's Case

On 15 August 2008 a duty manager at this hotel observed an altercation between two female Polish members of staff on the respondent's premises. Those women were identified as the claimant and a waitress. While both ladies were speaking loudly at each other this witness commented that the claimant was the louder of the two. This manager who saw "exactly what happened" stated that the claimant was aggressive towards her co-patriot and had raised her arm in an attempt to strike this waitress. However, he did not see any blow struck but did notice that the waitress was in an upset state. The witness arranged for that colleague to be cared for by another employee. He then reported the incident to the general manager. The witness soon typed out an unsigned brief statement of what he observed.

The Tribunal heard relevant background information on the complicated and troubled relationship between these women during the course of the waitress's evidence. This relationship was anything but harmonious and had resulted in earlier unfriendly exchanges between them. Name calling and shouting featured in those exchanges and the incident on 15 August was no exception. The waitress said that she deflected an attempted slap to her face from the claimant onto her shoulder. The claimant who was pregnant at the time was very aggressive towards her to such an extent that it frightened the witness. While she was fearful of the claimant prior to this incident she had not complained about her. She also made no written complaint to the respondent about this incident at the time.

The Tribunal was furnished with emails dated 17 and 18 September 2008 from the respondent which contained a statement from this witness about the incident on 15 August. By that time the claimant had been dismissed and the witness had not seen statements from two other colleagues.

The general manager told the Tribunal that both she and the human resource manager were unaware of the situation between these two Polish workers in August 2008 nor did she know that the claimant was pregnant at the time. The witness learned of a row between them when the duty manager reported the incident to her. She had no written complaint from the waitress. As part of an investigation into this incident the witness questioned some staff including the claimant and the waitress about what happened. She told the claimant of the complaints against her and gave her an opportunity "to say her piece". However, the claimant was not offered a chance to question the people alleging wrongdoing against her. During the course of that investigation the witness reminded the claimant of the contents of the company handbook.

The claimant did not dispute that she tried to hit the waitress and this physical action and its corresponding abusive and violent behaviour led the witness to issue the claimant with a dismissal letter when they again met on 16 August. That letter stated that the incident had been fully investigated and the claimant could appeal that decision to the group human resource manager. The witness added that the claimant had been dismissed for gross misconduct and that she had a duty of care to the staff for their safety. The waitress was also issued with a warning about her conduct.

The group human resource manager conducted the appeal on 1 September 2008. An agreed translator assisted at that meeting. The contents of unsigned statements were presented to the claimant about the incident on 15 August. The claimant admitted she raised her hand to slap the waitress but stopped herself from striking a blow. The witness was satisfied that the waitress had not provoked the claimant. Following this appeal hearing the witness considered "all the facts" and wrote to the claimant upholding the respondent's decision to dismiss her.

Claimant's Case

The claimant commenced employment as a general assistant at the hotel in June 2007. She received a company handbook but had an incomplete and unclear understanding of its contents due to language limitations. Some twelve months into her employment she informed the housekeeping manager of her pregnancy and that manager consequently placed her on light duties. In denying there was a record of conflicts with the relevant waitress the claimant remarked that they generally ignored each other. The witness maintained that this waitress started an argument with her on 15 August 2008 in the form of hurtful comments. That row developed into shouting and screaming match. The witness accepted she raised her hand but neither hit nor attempted to strike the waitress. She accepted that such a movement could be seen as threatening and was probably in breach of her

terms and conditions of employment. The waitress in turn raised her hands but also did not physically assault the claimant. When the duty manager appeared the waitress addressed him in a distressed way. The claimant said that she too was upset at the incident but that all the attention was given to the waitress.

Some time later the claimant together with a translator were called to the general manager office where this incident was discussed. At the conclusion of that meeting the claimant was told, "to go on home." Prior to a further meeting the next day the claimant said she attempted to hand in a letter of complaint about the waitress's behaviour the previous day. That attempt was unsuccessful as the housekeeping manager refused to accept this complaint and told her that this complaint was not going to help her case. During the course of the subsequent meeting with the general manager the claimant retained her written complaint and tried to hand her this document. Her attempt to do so proved fruitless. Towards the end of this meeting the managing director who had a letter in her hand presented it to the claimant. That letter informed the claimant of her immediate dismissal.

It emerged that the claimant had not been notified of possible sanctions against her that included dismissal during the period between the incident and the dismissal meeting less than thirty hours later. The claimant was not asked to make a written statement on her version of events nor had she any recall of receiving copies of statements or complaints made against her. During the appeal process the claimant said that she explained "everything" to the group human resource manager.

Determination

It is clear from this case that the respondent did not conduct a full investigation into the background and details of the incident between these two young women on 15 August 2008. The handling and indeed mishandling of statements by the respondent was a feature of this case. The procedures were further flawed in the hasty way in which the respondent approached and managed this case. A more measured and less judgemental way would have better served all sides and satisfied the need for natural justice.

The Tribunal is unanimous in finding in favour of the claimant under the Unfair Dismissals Acts, 1977 to 2001 and in the circumstances orders her reinstatement back to the position she held prior to that dismissal in August 2008.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

