

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD973/2008

against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr D. Hegarty  
Mr D. McEvoy

heard this claim at Waterford on 12th February 2009

#### Representation:

Claimant : Mr Emmet Halley, M. M. Halley & Son, Solicitors, 5 Georges Street, Waterford

Respondent : Ms Fiona Grogan, Hegarty & Co, Solicitors, 4 St Andrew's Terrace  
Newtown, Waterford

The determination of the Tribunal was as follows:

#### Claimant's Case

The claimant commenced employment with the respondent in May 2002. Apart from her main work behind the bar she had some input into the running of a bed and breakfast premises linked to this premises. The bar was leased by the respondent. She also attended to the alarm systems on the premises and "did the cash". The witness who worked six evenings a week at the respondent's resided nearby and enjoyed working there.

On the evening of 6 June 2008 the respondent in the company of another man entered the premises and ordered alcoholic beverages from the claimant. Both men "had a lot of drink on them" and seemed in good form. Just prior to the other man's departure from the premises the respondent engaged him and the claimant in conversation. The respondent's behaviour and demeanour towards the claimant changed from being sociable to adopting an aggressive, abusive and threatening tone. According to the claimant the respondent also called her unwelcome names and pointed his finger at her. She felt humiliated and frightened at this experience and left the premises. When she arrived home she told her husband what had happened and he in turn left for the bar.

During a phone conversation with the respondent the next day she reminded the respondent of his language and insults towards her and he agreed she need not report to work that evening. The

claimant then went abroad on a week's pre-arranged holiday. It was her understanding that the respondent was to contact her prior to her return to work on 16 June. The respondent indicated to her that he would speak to her about this incident when she returned from that leave.

There was no further contact between the two parties until 18 June when the claimant contacted the respondent. The claimant did not want to return to work prior to the respondent apologising for his offensive behaviour. They arranged to meet the following day with no preconditions. However, that meeting failed to materialise as the respondent refused to approach the claimant when he viewed her on 19 June. The claimant then sought and finally received her P45.

The claimant's husband confirmed that his wife returned home early from work in an upset state on 5 June. When he drove past the bar premises some fifteen minutes past ten he observed that it did not appear open. The claimant was prepared to return to work following her holiday and waited to be contacted by the respondent about this.

### **Respondent's Case**

The respondent returned to the bar from a business trip on the evening of 5 June and formed the impression that the claimant who was serving behind the bar "had drink taken". The respondent who stated he had not been drinking that day proceeded to place an order with the claimant. He soon took the claimant aside and spoke to her about her drinking. She got upset, denied she was drinking and left the premises. He in turn took over the bar service until the premises closed around midnight. The witness denied being aggressive, abusive and did not use foul language towards the claimant. However he had no memory of the words used in his conversation with her.

The following day the claimant told him that she was stressed out and it was agreed that she would not report for work that evening. She was to return to work following her holidays. When she failed to appear on 16 and 17 June the witness assumed that the claimant had left her employment. When contact was made between them on 18 June the witness arranged to see the claimant alone the following day. However he decided not to approach her when he saw that she was in the company of one of her daughters. The witness wanted to avoid "a scene".

The respondent who neither furnished the claimant with terms and conditions or a contract of employment had "no idea" why she was making allegations of abuse and menacing behaviour against him.

## **Determination**

This hearing lacked independent witnesses on both sides. One of the few aspects both parties agreed on in this case was that there were several customers in the bar on that relevant evening. Those potential witnesses might have assisted in explaining the conflicting evidence.

The Tribunal preferred the evidence of the claimant's side to that given by the respondent. As a result of her experience in the bar on 5 June the claimant understandably feared further mistreatment and needed reassurance from her employer that her health and welfare would be respected and indeed protected. In the absence of that assurance the claimant felt unable to return to work. The respondent's behaviour at the arranged meeting on 18 June added little to the claimant's confidence in him as an employer. The claimant was also deprived of a grievance procedure to formally air her complaints.

The claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds and the claimant is awarded €6625.00 as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

