

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee
WT238/2008

UD562/2008

against

Employer

under

**ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr. P. Casey
Mr. J. McDonnell

heard this claim at Cork on 11th December 2008

Representation:

Claimant: Ms. Jacinta Tang, 7 Ashmore, Pembroke Wood, Passage West, Co. Cork

Respondent: Mr. Stephen McGuinness, Comyn Kelleher Tobin, Solicitors, 29 South Mall, Cork

The determination of the Tribunal was as follows:

Respondent's case:

The restaurant Manager (CCY) gave evidence that he, the supervisor (B), and the claimant were working on Sunday 21 April 2008. B forgot to put a label on a food order, which angered the claimant. She began to shout and give out to B for making this mistake, and an argument ensued. He said that he told them both to calm down, but soon afterwards she heard the claimant again shouting and abusing B. At that stage he told her to go home, and that he would talk to her later. Before she left she approached B at the counter and threw a cup of ice in his face, causing a customer to step away.

Later that evening he rang her, and told her that if she wanted to return to work she must fix things with B first, so she replied that she would apologise to B. He then rang B to see if she had apologised, but B said that she had not apologised, but had given out to him all over again. He made the decision to dismiss her at this point, and told her this by phone. He said that he did not

issue her with a contract of employment, and that there were no written disciplinary procedures in the company. It was a case of gross misconduct, so it was correct to summarily dismiss her. He admitted that if he had known that the claimant had apologised to B, he would have acted differently.

The supervisor (B) gave evidence that he didn't put the label on the food order because it only concerned one customer, so it didn't make any difference. CCY told them to calm down after they argued, and he did so. He was shocked afterwards when she came into the kitchen shouting at him, so CCY told her to go home. Then she threw the cup of ice in his face, and he asked her what she was doing, was she crazy? The claimant said to him that it was all his fault that she was sent home. CCY rang him later and he told him that the claimant had not apologised to him, so CCY said that he would have to fire her.

He admitted that when the claimant rang him later that night she had apologised to him, but he did not tell CCY this because he did not want to work with her anymore.

Claimant's case:

The claimant gave evidence that because there was no label on the food order, the customer could have blamed her for B's mistake, so she gave out to him for this, but he also said nasty things to her. She said that she didn't throw ice into his face, but at his back. Later that evening she rang B and apologised to him after CCY told her to. But afterwards she received a text from CCY telling her not to come to work anymore. She was very upset at this because she was pregnant and needed money for her baby. She has not worked since.

Determination:

If all the evidence had been available to the respondent at the time of the incident, he may have acted differently.

The Tribunal finds that the claimant was unfairly dismissed, and awards her €7500.00 under The Unfair Dismissals Acts, 1977 to 2001,

There was no dispute as to the claimant's entitlement to holiday pay. Therefore, the Tribunal awards her €727.01 under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

