

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:  
Employee

CASE NO.  
UD430/2008  
MN390/2008

WT182/2008

against

Employer

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL  
Members: Mr R. Murphy  
Mr A. Butler

heard this claim at Dublin on 30th October 2008  
and 21st January 2009

#### Representation:

Claimant: Ms Aoife Carroll BL instructed by John F Kelleher,  
Solicitor, 4-5 St Mary's Terrace, Dunboyne, Co Meath

Respondent: Mr. Francis Mc Gagh BL instructed by Mr. Brendan Byrne  
solicitor of Liam Moran & Company, Solicitors, 11 Malahide Road,  
Swords, Co Dublin

The determination of the Tribunal was as follows:

#### **Respondent's Case:**

The owner of the respondent company gave evidence. There were 32 staff employed on day and night shifts. The claimant was employed as a night manager with 6 staff. His role was to supervise these staff and also do some of the baking. All was well until February 2007. The claimant contacted one of the van drivers saying he was unwell and would not be in work. There was only 1 staff present that night and day staff were asked to work a double shift. The witness said that the claimant should not have only told the van driver that he was unwell.

The claimant returned to work some days later and was not paid for his sick leave. He was not happy and told the witness that he should have been docked the money as he had bills to pay. The witness told him that 5 staff had been out and he had to pay the day shift double time to cover. The

claimant got legal advice and took a claim to the Rights Commissioner, which the witness appealed.

Their relationship deteriorated. He received complaints about how the claimant was treating some of the foreign workers, he arrived late and left early and would not do confectionery work. He told the claimant that he would have to change his role as night manager. On March 14<sup>th</sup> 2007 they had a meeting. The claimant was very angry, banging his fists on the desk. The following day he was given a written warning concerning his conduct and manner towards his colleagues. He was informed that if this behaviour continued he would be dismissed.

On March 21<sup>st</sup> 2007 he was given a second written warning regarding his non-attendance on Sunday 18<sup>th</sup> and complaints about the packing of orders. The witness told the Tribunal that it was dreadful behaviour and could not continue. If orders were incorrect, the customers docked the payment due. He did not receive a response.

On April 5<sup>th</sup> 2007 he was given another written warning concerning his unacceptable behaviour towards his colleagues. He tried to speak to the claimant on his phone and was told that he (the claimant) was getting protection. The claimant was not paid for any shifts he did not attend and was informed in writing on April 6<sup>th</sup> 2007. He again had cause to write to the claimant on April 20<sup>th</sup> concerning a novelty cake he failed to make. The customer was very dissatisfied and was given a €25 gift voucher.

On May 25<sup>th</sup> 2007 he was given a final written warning for again arriving late and leaving early and his behaviour. He was asked to attend a meeting the following Monday. At the meeting the claimant said the witness was picking on him, no one was talking to him and trying to make his life hell. The claimant admitted to opening a locked cabinet where confidential papers concerning staff wage rates were kept. No progress was made at the meeting. Prior to all the problems starting with the claimant had requested a pay rise but was told the respondent could not afford it. He told the witness that other staff were on more money than him. The witness decided to take back the key the claimant had to the office.

On June 18<sup>th</sup> the claimant was written to informing him that due to his attitude and behaviour he was suspended for two days with pay and was to attend a meeting the following Thursday. After the meeting the claimant was moved to the day shift and given an hourly rate of pay. As night manager he had been paid a salary. All went well until July 25<sup>th</sup> when a cake was produced at a very poor standard. The customer did not pay for the cake.

On October 25<sup>th</sup> he was again written to regarding his time keeping. The witness stated that any time he tried to reprimand the claimant he claimed the witness was picking on him.

On January 21<sup>st</sup> 2008 the claimant had asked one of the van drivers to stop slagging him. The witness told the claimant that he would speak to the driver if there were any issues to be discussed. The claimant told him to “f\*\*k off”, told him that he was only a “w\*\*ker and left. The following day he dismissed the claimant who told him he “was glad” as he “hated the place” and left. The witness said he was glad to see the back of the claimant.

Cross-examination:

The claimant never had a written contract of employment. If there were disciplinary issues they would be talked through, there was no written procedure. He had not received any responses to the letters he had given to the claimant about disciplinary issues. When put to him that he had phoned

the claimant on numerous occasions while on sick leave for a week he replied that he had only rang him twice. He stated that the claimant had got quite abusive at the meeting of March 14<sup>th</sup> and accused the witness of hitting him and said he would call the police. They did speak about his wages that day but the witness would not discuss other staff wages. The claimant was given a copy of the complaints against him before he was suspended. When asked he said that he met with staff on a weekly basis. The claimant had made 2 complaints to him but would not put them in writing as requested. He was unsure of the dates on which staff had made complaints about the claimant. When asked he explained that the night shift was 7.45 pm to 4.00 am.

The claimant received letters prior to any meetings that were held. He had brought the issue of hygiene with the claimant in connection with the incident of biting the top off an icing bag and licking cream off his fingers. He never berated the claimant in public. He never bullied him either.

*The name of the Respondent was clarified on the second day of the hearing XXXX; a limited liability company exists but the respondent traded as a sole trader.*

Second day of hearing:

The Tribunal heard evidence from the day shift manager (also known as PL), who told the Tribunal that he had minimal contact with the claimant when the claimant was on night shifts. Some of the polish workers expressed that the claimant was “out of hand” and this was mainly with one worker.

The claimant then changed, or was changed to the day shift and he managed the claimant and the day shift. He explained that the main problem was that the claimant wanted to work a 40-hour week (less hours than normal). What happened was that the workers complained that they would have to finish the claimant’s shift for him: to finish the claimant’s packing and his “creams”. The claimant also wanted to be paid the early rate (night work rate).

Cross-examination:

The witness was not aware if the claimant was given written grievance procedures. The witness could recall being at the meeting in June 2007 but could not recall what was said. He explained that three Polish workers submitted complaints about the claimant. He did not know if the claimant was given copies of the complaints. The witness did recall that at one time the owner asked him to have a word with the claimant as he was bullying. He spoke to the claimant and the claimant denied that he bullied anyone.

The Tribunal heard evidence from a witness who worked in the office of the bakery.

She explained that her work entailed filling in the production sheet and to take orders for the products. She “never really spoke to him (the claimant) as such”. She left notes (for the orders) for the claimant.

Regarding the incident in January 2008 she heard raised voices. The claimant and the owner were in the canteen. The claimant was roaring and shouting and using abusive language. She heard the claimant saying “f\*\*\* \*\*\* you are only a \*\*\*\*\*, I will get you, f\*\*\* \*\*\*”. She went to the bakery floor to get the day shift manager (PL the previous witness). By the time PL got to the canteen the claimant had left.

Cross-examination:

The witness explained about the orders. The orders could be faxed to the office and every customer got a docket, and she had a production sheet. When the claimant was on night shift she left a note for the claimant, for example there could be orders for novelty cakes etc. It was put to the witness regarding an order for a novelty cake that the claimant did not get a note and she denied this as it

was on the production sheet.

Answering questions from the Tribunal the witness further explained that the note was to highlight that the order was for a novelty cake. The note was an extra reminder and all the orders were on the production sheet.

The parties agreed to hear the claimant's case, as the respondent was awaiting witness's to arrive. The Tribunal allowed that the claimant's representative could re-visit the claimant's evidence if any points arose.

**Claimant's case:**

The Tribunal heard evidence from the claimant. He worked as a baker for 30yrs. He commenced working for the respondent in September 2001. He first worked in the bakery in Cabra, which later changed to located in Finglas. The hours were from 9.00 pm to 6.00 am. He got on with the owner. He did not see the owner often when he worked the night shift. The owner phoned him on Saturday nights to see how things were in the bakery. He had a great working relationship with his colleagues. Later on Romanian and Polish workers arrived and they hardly spoke English.

The claimant was asked if he received a contract, or terms of employment, a statement of employment or grievance procedures and he replied "No". He was asked if he was told of procedures and he replied, "No".

Problems began because he was ill in February 2007. He had a bad viral infection and got a note from his doctor. The owner reacted angrily because of this. The owner phoned his house to ask when he would return because pancake Tuesday was imminent. He returned to work on Wednesday but had to go home. He collected his wages and later on that night he got a phone call from the owner. He told the owner that he was still unwell. He returned to work on Thursday because of "all the hassle". His medical note was up until (Friday). The owner docked the money from his wages. He had never been that sick before.

He phoned the owner to arrange to meet him. He met the owner on 14<sup>th</sup> March 2007. The owner was in a bad mood. The owner asked him if he allowed a worker to have time off. He asked him in an abusive manner. The claimant had previously seen wage sheets and anomalies in the wages of other workers. He mentioned something about the other workers wages to the owner. The owner "squared-up" to him with his fists clenched and told him that it was none of his business. He told the owner to let him out of the room. The owner would not let him leave. The owner told him that he had enough to sack him. The claimant was physically shaking.

He later spoke to the owner and the owner told him that the situation had gotten "out of hand". The owner told him that he had personal problems. He found that he was being docked wages. He later spoke to the owner on the phone and asked the owner for pay slips to show the deductions. He did not get pay slips.

The claimant took a week holidays. When he returned one of the other workers told him that they were going to ask the owner for a pay rise. Another one of the workers approached him and said "I believe you want to get me and another off the nights". The claimant explained to the Tribunal that after that "the English stopped", "it really turned sour". After this the workers spoke Polish in his presence. The other workers had told him that the owner said to them that he (the claimant) wanted them off the night shifts. He did not approach the owner about that as "the conversation had dried up at that stage".

The claimant was asked about a novelty cake. He explained that he had no recollection of the cake. He had no recollection about a note for the cake.

Regarding a final written warning dated 25<sup>th</sup> May 2007: the owner had not spoken to him about the warning prior to him receiving the warning. The warning was given to him by way of leaving it in his locker or “hung on the wall”.

The claimant attended a meeting with the owner and PL. The owner showed him letters of complaint from the three Polish workers. He glanced at the letters. He was not given a copy of the letters. The incident about the wage file was brought up again. The claimant felt intimidated at the meeting with the two of them in the room. He himself did not have anyone with him. He was not offered to have anyone with him. At the meeting they did not discuss the possibility of him being disciplined.

A letter to the claimant informing him that he was being suspended was opened to the Tribunal. He was not warned prior that he would be suspended. He was suspended for two nights and it turned into three nights.

The claimant was invited to a meeting. He brought two of his sisters, as he had no representative at the previous meeting. The owner told him that he had CCTV footage of him and that “he was up to no good on the floor”. He said to the owner “did you not see the bullying”, the other workers would not talk to him. The owner told him that he was being suspended with pay for three weeks.

The claimant returned to work on 09<sup>th</sup> July. He changed from night shifts to day shifts. The day manager was PL and he was surprised to see the claimant was on day shift. PL was not sure where to put the claimant. He placed the claimant making pancakes.

By this time the owner was not being nice to the claimant. He was whispering things to him. The claimant approached PL to ask him to do something. PL told him to leave it with him and he would have a word with the owner. He also told PL that his wages were at a rate that a junior worker would be on. PL told him to leave it with him and he would see what he could do. He raised the owner's behaviour with PL numerous times and nothing was done.

The claimant had a case pending in the Rights Commissioner and prior to the hearing the owner called to the bakery floor. He told the claimant that he saw him licking his fingers. The claimant told him that he did not. The owner told him “you did I have witnesses”. The claimant was asked if he tried to be hygienic and he replied “of course yes”. Regarding the other employees they did not clean up after themselves and they barely wore hats.

The day after the Rights Commissioner hearing the owner came over to him and told him that a cake he was working on was lopsided. He told the owner “If you want it done right (buy equipment)” and the owner said that he “wasn't f\*\*\*\*\* buying that”. He told the owner that he was being bullied by him.

The claimant contacted the Health and Safety Authority about “bullying and spying on me and staff”. The HSA contacted the owner and asked about bullying and the owner denied it. The HS sent the owner guidelines to put them into practice. The HS also sent the claimant a copy of grievance procedures and a booklet on bullying. The claimant filled in forms and sent them to the HS. The claimant also gave a complaint to PL and PL told him to leave it with him.

On the second last day that the claimant was in the bakery the van driver getting on to him about the cakes. The claimant explained that the van driver was a “nice bloke” and was only joking but it was “getting to” him. He went for a break. The owner arrived and stood at the door (of the canteen). The owner walked to him and told him that he was not to talk. He told the owner that he would have to give it to him in writing. The owner said to him that he was not a man, how could he look at himself in the mirror. The claimant then started shouting and cursing. The owner told him that he would work with him the following week, “to see how he would like it”. The claimant finished his lunch.

PL approached the claimant and asked him if he would not wait for the owner as he was coming back and he declined. He saw the owner returning so the claimant got into his car and drove off.

The next day the claimant arrived to work. He got into work clothes. The owner arrived and told the claimant, “get dressed you are getting out of here, there’s your letter”. The owner marched him out of the bakery. Outside the owner told him that he was not a man.

**Determination:**

Having heard the evidence the Tribunal is of the view that proper sound procedures were not adhered to in the dismissal of the claimant. The preponderance of the evidence suggests that he contributed to his dismissal and on that basis the Tribunal award him the sum of €10,000 under the Unfair Dismissals Acts 1997 to 2007. The Tribunal dismisses the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act 1997 as no evidence was adduced by either party in respect of these claims.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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