

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

-claimant

CASE NO.

UD343/2009

MN346/2009

Against

3 Employers - *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. S. Ó Catháin

Members: Mr J. Killian
Mr D. McEvoy

heard this claim at Waterford on 15th July 2009

Representation:

Claimant : Mr Niall King, JF Williams & Co, Solicitors, Main Street,
Dungarvan, Co Waterford

Respondents : E A Ryan & Co, Solicitors, Bridge Street, Dungarvan, Co. Waterford

The determination of the Tribunal was as follows:-

Respondents Case

The owners of the respondent company employed the claimant as a Bar Manager on the 23rd of October 2007. The owners are both in full time employment outside the respondent company. The respondents believe the dismissal was justified, it was not an easy decision as they relied on the claimant and it was a very busy time of year. The claimant breached the owner's trust so they were left with no choice but to dismiss the claimant. There was no Contract of Employment or Disciplinary and Grievance Procedures in place.

The first owner had found a black holdall bag beside the door of the premises. She opened the bag and it contained among other things two packets of firelighters, cleaning products, bottles of alcohol and bags of coins. Permission was not asked or given to the claimant to remove these items from the premises.

On the 29th of December the second owner saw the black holdall bag near the door of the premises. The owner asked the claimant did he know who the bag belonged to. The claimant told the respondent it probably belonged to a customer that was in earlier. The owner opened the bag and discovered the cleaning products and alcohol it contained. The first owner rang the second owner

on the 30th of December regarding the bag and its contents.

The second owner called the claimant and requested him to come to the premises. The claimant was asked who owned the bag and he admitted it belonged to him. The claimant apologised for lying about owning the bag and said he was borrowing the cleaning products until he could get to a shop. The claimant said that customers had purchased the alcohol for him and he was taking it home. The owner did not inquire about the coins, as he was not aware of them at the time. The other staff are aware that alcohol cannot be taken off the premises. The respondent dismissed the claimant at the end of this conversation.

Claimants Case

The claimant was employed as a Bar Manager on the 1st of October 2007. On the 29th of December 2008 the claimant intended to go to the shop for cleaning products on his way to work but realised that he had no money. The claimant put the cleaning products in his bag with the intention of replacing them the next time he went to the shop, he intended to drink the alcohol purchased for him at home. That evening the claimant returned to the premises in a social capacity. The second owner asked him about the bag but at that stage the claimant had consumed alcohol and does not recall the conversation.

On the 30th of December the claimant received a phone call requesting that he come to the premises. The claimant was asked about the bag and its contents. The claimant explained that the customers had bought him the alcohol and that he borrowed the cleaning products intending to replace them. The claimant would have asked permission to borrow the cleaning products had the owners been on the premises. The claimant apologised for not asking permission to borrow the cleaning products. The claimant was informed he was being dismissed because the owners could no longer trust him.

Determination

Based on the evidence presented to the Tribunal there was no previous incident involving the claimant and there was no Contract of Employment or Disciplinary Procedures in place. The Tribunal is in no doubt that procedural fairness was not followed by the respondent in effecting the dismissal of the claimant. The Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. However the claimant contributed substantially to the circumstances of his dismissal and is awarded €400.00 compensation.

The Tribunal is satisfied that the claimant's employment ended without notice and he is therefore entitled to compensation of €400.00, which is equivalent to one week's gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)