

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee - claimant

CASE NO.
UD135/2009
MN124/2009

against
Employer - 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: Mrs M Quinlan

Members: Mr J O'Neill
Mr J Maher

heard this claim at Dublin on 10th September 2009

Representation:

Claimant(s): Mr Peadar Nolan
SIPTU, Food Branch, 7th Floor, Liberty Hall, Dublin 1

Respondent(s): In person

The determination of the Tribunal was as follows:

Respondent's Case:

The General Manager (GM) of the respondent company gave evidence that he received a complaint from a customer claiming that the claimant had been aggressive towards him. GM asked the claimant to come to his office, which GM shared with the company owner, on 31st October 2008 where he told him of the complaint. The meeting did not go far as the claimant became agitated and swore at GM and the owner of the company and accused them of being racist. The claimant lifted a crate of glasses and was moving towards the owner with it so GM restrained him. The crate fell to the ground, though the glasses did not break. GM disputed that the door was locked.

GM physically removed the claimant from the office and took his van keys from him. The claimant said he would sue the company. GM did not recall what he said to the claimant but he considered that it was clear to the claimant that he was being dismissed. A letter was issued to the claimant confirming his dismissal. The claimant was dismissed for his behaviour at the meeting and not because of the customer complaint. GM stated that he did not want someone like that in the

company.

During cross-examination GM stated that normally employees are offered to bring another employee with them to an investigatory meeting, but the claimant was not offered this. Neither was he offered a chance to appeal his dismissal as GM stated that he and the owner did not want to speak to the claimant again.

GM disputed that he had received three letters from the claimant's representative seeking an appeal hearing, but acknowledged that he had received one, which he did not respond to. GM considered that the meeting with the claimant had been a strange, aggressive incident and the owner did not want to see the claimant again. In February 2008 the claimant had been dismissed for an aggressive incident and had been reinstated shortly afterwards. However, GM could not see where they could go from this situation.

The claimant was a good driver, but he contended that there had been numerous occasions when the claimant's temper had been an issue, however, the company had never written to the claimant regarding his temper or issued him with a written warning. GM explained that the owner was a paternal type of employer who likes to speak to individuals about any issues.

Claimant's Case:

The claimant gave evidence that when he finished his shift at 3pm, on 31st October 2008, he was asked to go to the office. GM told him that a customer had made a complaint and asked if he wanted to continue working. The owner walked behind the claimant and locked the door. He then grabbed the claimant and hit him. The claimant picked up a letter tray to defend himself. Then the owner told him to leave and to leave his uniform. The claimant was not offered the opportunity to appeal the decision. GM told him he could go to court as he was leaving.

Determination:

There was a conflict of evidence between the parties. The claimant was dismissed instantly without any proper investigation and no attempt was made to adopt fair procedures. The claimant was not afforded the opportunity to have representation or to defend himself. Accordingly, the Tribunal finds that the claimant was unfairly dismissed and awards him €21,000.00 (twenty-one thousandeuro) under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal also awards the claimant €920.00 (nine hundred and twenty euro) in respect of two weeks notice entitlement under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)