

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

EMPLOYEE - *claimant*

against

2 EMPLOYERS - *respondent*

under

**CASE NO.**

UD844/2008

MN776/2008

**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: Ms. K. T. O'Mahony B.L.

Members: Mr. J. Hennessy  
Mr. G. Whyte

heard this claim at Kilkenny on 7th January 2009

**Representation:**

Claimant(s): Eamonn Hayes, Solicitors, 50 New Street, Carrick-On-Suir,  
Co. Tipperary

Respondent(s): In person

The determination of the Tribunal was as follow

**Respondent's case:**

The owner (OB) of the respondent business dismissed the claimant because she falsified her hours in the signing-in book. Reviewing CCTV footage, he discovered that the claimant had been falsifying her hours of work by half an hour to two and a half hours per shift. He had viewed the CCTV footage a day or so prior to dismissing the claimant. He dismissed the claimant by telephone. He could not remember what he had said to her but he had told her that she was no longer employed.

OB did not produce the signing-in book or the CCTV footage at the Tribunal hearing and was unable to confirm the dates when the excess hours were claimed. However, two and a half hours were claimed on at least twelve occasions. The CCTV was linked to OB's home in England and he had constant access to it but only looked at it when needed. OB denied that the claimant was the only employee dealing with the public and serving in the bar. Two other employees, one in the bar and the other in the kitchen, also serve drinks.

OB had no knowledge of any agreement which the claimant allegedly made with the bar manager (BM) in May, whereby she would sign in half an hour earlier than her shift start-time. The claimant worked a six-day week including Sunday. Staff alternated their off days. OB considered that signing in for two and a half hours to be gross misconduct and summarily dismissed the claimant. The final straw for OB had been when the claimant and her boyfriend had come in to the premises on a Saturday at 12.00pm and served themselves food without paying for it. The claimant had then started her shift at 12.30pm.

BM confirmed that the claimant's hours of work had been 11.30am to 3.00pm five days per week, and 11.30am to 6.00pm on Sunday. The claimant had been working these hours before BM started with the respondent. She had no reason to check up on the claimant or not trust her. BM agreed that the claimant has been seeking a pay increase for some time and that she (BM) had promised to refer the issue to the respondent's accountant but she could not recall any suggestion having been made by the claimant that she – the claimant – would sign in early as an alternative to getting a pay increase. Towards the end of her employment, the claimant had told her that she had come to work half an hour early and BM had taken the claimant at her word; she had no reason to doubt her.

The employees knew that there were CCTV cameras throughout the premises and that the owner was monitoring the premises from his home in England. BM reported to OB, usually by telephone. OB visited the premises once a week. The claimant was an excellent worker and very capable. BM did not realize that she had been charging for hours that she had not worked. OB had informed her about it. She had not been involved in the claimant's dismissal and OB had no prior discussions with her about it. She was speaking to OB on the telephone and he told her to ask the claimant to contact him. Following her dismissal, the claimant had come to BM's house.

### **Claimant's case:**

The claimant commenced employment with the respondent as a barmaid on the night shift. Over time, she took on extra duties such as typing the menus, helping with the preparation of food, waitressing, cleaning and working behind the bar. When the bar cleaner was on holidays, the claimant took on the cleaning duties because no one else would do it. If the chef was busy in the carvery, she prepared the food and served the school children.

At the commencement of her employment, her basic rate of pay per hour had been okay. However, with the extra responsibilities she had been performing, the claimant sought a pay increase. She had asked BM about an increase on several occasions and BM had indicated that she would see what she could do about it. She never got the pay increase. Had the respondent refused to give her a pay increase, she would have left his employment.

When there was a christening celebration on the premises in May 2008, the claimant had to work alone because another employee had failed to show for work. The claimant had attended to the christening party and had also served at the bar. She had been annoyed about this and told BM that it was unfair on her to have to do so much work alone. She had also told BM that she was going to sign on for an extra half hour and BM said "o.k". The claimant denied that she had claimed for an extra two and a half hours at any time.

The claimant was aware of the CCTV on the premises. Everyone was aware that there were cameras everywhere on the premises and that they were linked to the owner's home and that he could log on anytime and see what was happening.

All staff were entitled to have food when working and she took food for her lunch when she was working. She paid for any food her boyfriend had, or which she had on her day off.

The claimant confirmed that she had been dismissed by way of a telephone call from OB. At his

request, she had telephoned him from the office and he had told her that he was letting her go because she had been signing for hours that she had not worked. She had asked him what he meant and he had replied that she had been signing for hours when not even on the premises. She had asked him if he was serious and if he was letting her go right there and right then and he had replied that he was. She had then put the telephone down, got her jacket and went to BM's house.

The respondent did not avail of the opportunity to cross-examine the claimant.

Replying to the Tribunal, the claimant said that she had only been claiming for the extra time for about six weeks prior to her dismissal. Her working day had commenced at 11.30am and she had signed in from 11.00am. She had never commenced work at 12.30pm. She had heard nothing more from OB since the telephone call of dismissal. OB dismissed her because she had been claiming for hours when not at work.

The claimant confirmed that she had received terms and conditions of employment from the respondent (*a copy of same was opened to the Tribunal*). In same was stipulated that full consultation would take place before a decision was taken to dismiss. However, the claimant had not been part of a consultation either before or after the telephone call dismissing her.

**Determination:**

The respondent did not substantiate the serious allegations he made against the claimant by producing the CCTV footage. Where there was a conflict between the parties' evidence, the Tribunal preferred the claimant's evidence.

There was a complete failure on the part of the respondent to comply with any standard of fair procedures or with any procedures at all when dismissing the claimant. The respondent failed to carry out an investigation or put the allegations to the claimant or provide her with an opportunity to reply to the allegations. In all the circumstances the Tribunal unanimously finds that the dismissal was unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant compensation in the sum of €8,112.00 under the Acts.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also succeeds and the Tribunal awards the claimant the sum of €312.00 in lieu of notice, this being the equivalent of one week's pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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