

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
Employee - claimant

CASE NO.  
UD278/2009  
MN276/2009

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: Mr T Taaffe

Members: Mr M Murphy  
Ms K Warnock

heard this claim at Navan on 6th October 2009

Representation:

Claimant(s): Ms Rosemary Mallon BL, instructed by:  
Mr Hugh Thornton  
Thornton & Co, Solicitors, 1 Maudlin Street, Kells, Co. Meath

Respondent(s): Mr Andrew Nugent BL, instructed by:  
Mr Jerome Gallagher  
McAlinden & Gallagher, Solicitors,  
Ashbourne Town Centre, Main Street, Ashbourne, Co. Meath

The determination of the Tribunal was as follows:

Prior to the commencement of the hearing the respondent submitted that the claimant, because of holiday time, had not been in employment for the statutory period and that the claim should not be heard. Having heard the claimant's response to this submission the Tribunal rejected the submission.

Respondent's Case:

The operations manager (OM) of the respondent company, a bar/restaurant, gave evidence that she was involved in the hiring of the claimant for the role of head chef in 2007. There were no problems with the employment initially. On one occasion the OM found the kitchen to be dirty and cleaned it with the claimant and another member of staff. The kitchen improved for a time afterwards.

On 15<sup>th</sup> August 2008 the OM arrived at work to find the claimant, and other employees, drinking in the outside smoking area. The OM then found out that the staff had ordered pizzas from the kitchen. Though the staff had finished their shift and were out of uniform, and while there was nowritten policy about staff staying after shift and eating, the OM wouldn't have allowed it. OM alsoinspected the kitchen and found unlabelled meat.

The OM intended to give the claimant a written warning the following day regarding eating and drinking on the premises and unlabelled meat in the kitchen, but the claimant was crying when she arrived. The OM felt sorry for the claimant and told her to clean the kitchen, which she did. The OM did not issue a warning to the claimant. Things improved afterwards concerning the labelling of meat.

The OM was on holidays for three weeks from the 9<sup>th</sup> October 2008 and was not present when another co-owner dismissed the claimant. The OM prepared the roster prior to going on holidays and contended that the roster did not change while she was away. There was no system of clock cards or sign in sheets. The OM stated that the claimant worked a maximum of two weeks straight.

During cross-examination the OM agreed that the claimant was not issued with a written contract of employment and that there was no written disciplinary procedure or staff handbook. The claimant was issued with a payslip once. The OM could not recall saying to the claimant, during a phone call, that she was shocked at the claimant's dismissal and that the co-owner had done it before.

A co-owner of the respondent company gave evidence that he was also involved in the recruitment of the claimant and all terms and conditions were agreed verbally with the claimant. The co-owner was not onsite all the time and only made occasional visits. The co-owner was aware of the incident of the 15<sup>th</sup> August when the claimant and other staff were eating outside.

The co-owner visited the bar on the 10<sup>th</sup> October 2008 and again on the 20<sup>th</sup> October 2008, while the OM was on leave. The claimant was not at work during either of the visits. The co-owner inspected the kitchen and considered the kitchen to be untidy when he visited on the 10<sup>th</sup> October, but nothing that would warrant a warning.

When the co-owner returned on 20<sup>th</sup> October 2008, at approximately 10am, he again inspected the kitchen and the cold room. He found some sauces with lids off and without labels and turkey with green mould on it. He also contended that he saw six lumps of cooked roast beef without labels on a counter. The co-owner disposed of a large amount of product and checked the HACCP records. HACCP is a food safety system (Hazard Analysis and Critical Control Point). The HACCP sheet is kept to record the cooking temperature of meat. The co-owner discovered that there were days when the claimant was not rostered for work and had signed the HACCP record sheet.

The claimant was off on Monday and Tuesday and the co-owner decided to wait for her to return on Wednesday to question her about the records. He co-owner spent the intervening time going through the records and the staff roster.

When the claimant arrived for work on Wednesday morning, 22<sup>nd</sup> October 2008, the co-owner asked her to come to the office. The co-owner asked claimant about the HACCP records and she stated that they were kept up to date. The co-owner said that she had signed the sheet for days that she wasn't in. The claimant said she was sorry and the co-owner replied that he was sorry too but that he had to let her go. The co-owner told to her he was paying her two weeks notice and

he claimant left. The co-owner took the decision as it was a serious breach of hygiene and he believed he had no other choice than to dismiss.

During cross-examination the co-owner stated that the claimant had signed the HACCP sheet on the 10<sup>th</sup> October when she wasn't present. He decided on the 20<sup>th</sup> October to have a meeting on the 22<sup>nd</sup> October, which was to be both investigatory and disciplinary. The co-owner did not notify the claimant of the meeting in advance or advise her that she could bring someone with her. The co-owner did not provide the claimant with a copy of the documents being referred to, but put them to her verbally. The co-owner disputed that he was so annoyed that he didn't give the claimant an opportunity to explain. The co-owner decided to dismiss the claimant when she said she was sorry.

#### Claimant's Case:

The claimant gave evidence that she did not receive any warnings during her employment. The claimant stated that it was normal for staff to have a drink after work, but on that occasion the staff had been busy all day, and had no time for a break, and so had ordered pizzas to eat when they were finished. The claimant received a phone call from OM who told her that the co-owner was annoyed that they were eating on the premises, but did not receive a warning.

The claimant disputed that she had ever signed her name on a HACCP sheet for a time she was absent. The claimant received no prior notice of the meeting on Wednesday 22<sup>nd</sup> October 2008. That morning the claimant was waiting in the car park for one of the chefs to arrive with the keys. The co-owner arrived in his car at approximately 9.15am and drove around the back. The claimant phoned the chef to tell him to hurry up and went to explain the delay to the co-owner. He was annoyed and went to get a paper.

When the co-owner returned he asked the claimant to come to the office. He started talking about the HACCP sheets and there having been a container of fish unlabelled on Monday. The claimant explained that she wasn't in on Monday. The claimant disputed that she apologised for the HACCP sheets being signed on days she was absent. She could not recall apologising, but if she did it was not in relation to the sheets. The claimant was told she was being dismissed for poor hygiene practices.

The claimant felt intimidated by the co-owner and did not believe she had been given an opportunity to state her case. The claimant disputed that she had poor hygiene practices and stated that the kitchen had passed two health inspections during the previous year.

During cross-examination the claimant agreed that the OM and another staff member had thoroughly cleaned the kitchen with her, but contended that it was a normal practice to occasionally give the kitchen a thorough clean. The claimant stated that after the evening when staff had eaten pizza she had received a phone call from the OM who told her that the co-owner was unhappy about staff eating pizza and that she didn't think the kitchen was up to hygiene standard. The claimant disputed that the kitchen was not up to hygiene standard.

#### Determination:

The Tribunal is satisfied that the claimant's claim is well founded. The Tribunal is satisfied that there were no disciplinary procedures in place to address the matter and finds that the claimant was unfairly dismissed. The Tribunal acknowledges that the claimant's attempts to find alternative

employment were confined to her local area. Accordingly, the Tribunal awards the claimant €50,000.00 (fifty thousand euro) under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal awards the claimant €834.45 (eight hundred and thirty-four euro, forty-five cent) in respect of one week's notice under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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