

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE *-claimant*

CASE NO.
UD410/2009
MN418/2009
WT183/2009

Against

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy

Members: Mr. J. Browne
Mr. A. Butler

heard this claim at Wexford on 10th December 2009

Representation:

Claimant: Mr. Alan Mooney, Ensor O'Connor, Solicitors, Melrose House, Westgate, Wexford.

Respondent: Mr. John Burke-O'Leary, Frizelle, O'Leary & Co. Solicitors, Slaney Place,
Enniscorthy, Co. Wexford

The determination of the Tribunal was as follows: -

Claimant's Case

The claimant was initially employed in July 2006 as a barman, promoted to supervisor then assistant manager in the bar of the respondent hotel. The claimant was responsible for staff supervision and the till. The claimant reported to the Bar Manager (P.C.). Before the incident that led to the claimant's dismissal he had no prior disciplinary issues.

On Tuesday the 9th of September the claimant was working with one other member of staff. At 12.30am the bar closed and the claimant started cleaning up. The claimant counted the till, he fixed the small and large float and found an extra €30-40 compared to the till total printout. This was not an unusual occurrence; the till was mostly over only occasionally short. It was procedure to put the money that was over under the till drawer and the Bar Manager (P.C.) would sort it out in

he morning, if the till was short the next night the money over would compensate for the money shortin the till. The claimant requested that his colleague drop up €20 to the safe as the till receipts and cash didn't balance, this is normal procedure.

On completion of all their duties the claimant and the other staff member had 9-10 drinks at the bar, which they did not pay for. This was a regular event and happened four nights out of the week. The claimant often had drinks after work with the Bar Manager (P.C), which they did not pay for, as was the practice in the Bar. The Assistant General Manager (B.H.) arrived with a friend around 3.30am and stayed for four drinks. The claimant was not back to work until Friday starting at 3.00pm. At 6.00pm the claimant went for a break and was asked to go and see the Bar Manager in the main office.

The Assistant General Manager and the Bar Manager were in the office. They asked the claimant about his drinking activities on the night of the 9th of September and asked what time he had left the premises. They did not inform the claimant the reasons for calling the meeting or that it was a disciplinary meeting. The claimant was not offered a representative or time out before the meeting.

The claimant responded to the questions informing them that he did not know what had happened to the money over, that he normally put it under the till drawer. The claimant asked if it was in the tip jar to which they said no, they had checked the CCTV. They pressured the claimant and said they just needed an answer then he could go back to work. They told him to take a 5-minute break and to have an answer when he came back to the office.

The claimant returned to the office and reiterated that he had no answer as to where the money was gone. They gave him two options; to resign his position with the respondent or to call the Gardai to the respondent premises to investigate the incident. The claimant was informed that if he resigned he would get a reference otherwise the Assistant General Manager informed him that due to the Garda investigation "his name would be in the paper." The claimant asked P.C. for advice and he said, "I would resign because you would be sacked for drinking anyway if the hotel owners found out."

The claimant resigned and applied for alternative positions but when the prospective employers contacted the Bar Manager for a reference he told them the claimant was not to be employed.

Claimant Cross Examination

The claimant does not think the money over was more than €30-40, definitely not the €250.00 B.H. is suggesting. The claimant was never offered the opportunity to view the CCTV footage of the Bar the night of the incident. The claimant asked if there was a problem with his till to which the Bar Manager replied "it doesn't matter."

Respondents Case

The Assistant General Manager (B.H.) went to the respondent's Bar at 1.00am the night of the 9th of September with a friend and ordered two drinks. There was a management account operated so B.H. did not pay for the drinks. B.H. asked the claimant about the 5 fifty euro notes sitting beside the till, to which the claimant murmured something about tips and picked up the money and moved out of view. B.H. left the bar at 1.30am.

The following morning B.H. reported the incident to P.C. and they checked all the tills, tip jar and

floats. B.H. does not know where the €250.00 came from as everything balanced. The meeting with the claimant was to investigate the incident; it was not a formal disciplinary meeting. The claimant first said he left at 2.30am but retracted when B.H. put it to him that the CCTV showed him leaving the premises at 7.15am. B.H. offered to show the claimant the CCTV but the claimant declined. The claimant admitted picking the money up but did not recall where he put it.

On the claimant's return to the meeting after the break B.H. explained the disciplinary procedure and the respondent's policy of calling the Gardai to investigate the missing money. The claimant resigned verbally. As the meeting was informal the official disciplinary procedures did not apply at that stage but would have been officially launched after the meeting if the claimant had not resigned.

The Bar Manager did not offer any advice to the claimant regarding resigning. P.C. has a policy of not giving references over the phone so when the claimant's prospective employer phoned him he informed the employer of this.

The Bar Manager's policy regarding over and unders of the till is to put the extra money in the safe and take the shortfall if there is an under from the tip jar. An extra €50 over in the till would be extraordinary normally it was €20-€30.

Determination

Having heard all the witnesses the Tribunal prefers to accept the evidence given on behalf of the respondent. The Tribunal have decided that a dismissal did not take place. Accordingly, the claims under Unfair Dismissals Acts, 1977 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail. The claim under the Organisation of Working Time 1997 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)