

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE – *claimant*

CASE NO.
UD1401/2008
MN1334/2008

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: Ms. P. McGrath B.L.

Members: Mr. M. Kennedy
Mr. G. Lamon

heard this claim at Dublin on 6th April 2009
and 10th November 2009

Representation:

Claimant(s): Ms. Mary Paula Guinness B.L. instructed by Mr. Peter Murphy, O'Mara
Geraghty McCourt, Solicitors, 51 Northumberland Road, Dublin 4

Respondent(s): No representation listed

The determination of the Tribunal was as follows:-

Preliminary point:

Opening statement's

Counsel for the claimant said that the claimant commenced employment with a company (*hereinafter referred to as GMC*) in October 2006 as an assistant café manager. He did not receive a contract of employment at that time. A year later, the claimant received a contract of employment stating that he was employed by the respondent as a café manager. Both companies paid the claimant. Both companies have the same directors and both were involved in the dismissal of the claimant.

The director of GMC (*hereinafter referred to as DH*) stated that the respondent always employed the claimant. The respondent is a management company who have a pool of staff, which they provide to the different cafes of GMC.

The claimant had been given a contract of employment for both jobs as assistant café manager and

café manager. He commenced employment in October 2006, having been interviewed for the job as assistant café manager by the then respondent's manager. DH interviewed the claimant for the job of café manager and this role commenced in November 2007.

Counsel for the claimant submitted that the relevant parties for both companies – the respondent and GMC – were the same and both have the same directors. She made an application to amend proceedings to the above named respondent. DH did not oppose this application. Having considered that application, the Tribunal granted the application and allowed the submission of a new T1-A form (*Notice of Appeal*) naming the above respondent. Accordingly, the claimant's representative withdrew proceedings against GMC. DH also confirmed that the respondent is now in liquidation and accordingly felt that it would be appropriate for the liquidator to attend the hearing.

On the *second* day of the case neither the respondent nor a representative were present at the hearing. The liquidator who had been appointed wrote to the Employment Appeals Tribunal stating he would not be attending the hearing but would not object to any ruling the Tribunal issued.

Claimant's Case:

The claimant gave evidence. He commenced employment with the respondent in October 2006. In May 2007 there was an incident where a customer complained of his tardiness. A second customer complained of being given the wrong change. He apologised and was then accused of abusing his colleague. He received a written warning but was told not to worry it would stay on his personal file for 6 months.

The Manager resigned and he took over as acting manager with a probationary period of 6 months. In May 2008 he had to attend work on his day off to cover a colleague on sick leave. When staff were leaving for the evening they had to pass a security checkpoint. If a green light was lit they could walk straight out, if a red light shone they had to open their bags for inspection. As he was leaving and passing the security checkpoint the red light shone. He dropped his bag on the security monitor. He received an email from the building's ground tenant of their unhappiness of his attitude. DH also raised the issue with him.

The following Monday one of the waitresses came to him very upset telling him the chef would not process her order. After processing a credit card transaction he went into the kitchen and asked the chef to process the order but was told to get out of his kitchen. The chef flicked egg all over him. A waiter came in and told them to calm down but the chef punched the claimant. He went to the hospital and rang HR that evening and was told to take time off. On Tuesday DH asked to meet him in Howth. At the meeting he was told the incident was all his fault, that there was no position for him in the Dundrum premises but did offer him a position in a premises in Howth. The claimant declined due to the distance factor. He was told to take a week off.

On May 26th 2008 he emailed DH to ascertain what was going on. He received a letter to arrange a meeting. He met DH and the office manager. They went through the details of what had occurred. The office manager told she had statements but he didn't need to see them. She would not let him see her notes of the meeting but asked him to sign off on them. He refused.

He returned to work on June 18th 2008. There were no problems until October 2008, suppliers and staff were not being paid. The respondent lost their liquor licence. He was advised to stop selling alcohol. The office manager was not pleased. He was called to a meeting with DH and the office

manager and was advised there was an allegation of bullying against him. He was dismissed on November 8th 2008.

Determination:

The Tribunal has carefully considered the evidence adduced over the course of two days of hearings. Having considered the submissions made for and on behalf of the applicant the Tribunal members are satisfied that the named respondent (now in liquidation) is the employer and the appropriate party to whom any determination should apply.

Having regard to the uncontested evidence the Tribunal is further satisfied that the applicant was unfairly dismissed. In particular, the Tribunal finds that there was no attempt to follow fair and proper procedures.

In light of the above the Tribunal awards the sum of € 20,000 (this being 33.26 weeks at a weekly gross wage of €551.54) under the Unfair Dismissals Acts, 1977 to 2007.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is allowed and the claimant is awarded € 1,103.08 as compensation for two week's notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)