

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD617/2009

WT269/2009

- claimant

MN626/2009

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. L. Ó Catháin

Members: Mr. J. Hennessy
Mr. J. McDonnell

heard this claim at Waterford on 14th October 2009 and 8th December 2009

Representation:

Claimant : Mr. James Burke B.L. instructed by David Burke & Co,
Solicitors, 24 Mary Street, Dungarvan, Co Waterford

Respondent : Mr. Justin MacCarthy, MacCarthy & Associates, Solicitors,
10 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's case:

The Tribunal heard evidence from the Junior HR manager. The claimant worked as store-man. There were issues with the claimant in that he was not always available when needed and he could not be found. She reported him to the general manager. If

there was a delivery or if something needed fixing she would call on the claimant. On three occasions she had to report him as not being there. The claimant said he had gone for supplies or had to leave for a moment. When she reported him to the general manager he undertook to deal with the matter.

In cross-examination witness stated that when the claimant was missing she would have asked him where he was and she assumed that the general manager would have recorded these dates.

In answer to questions from Tribunal members witness said she assumed that the general manager spoke with the claimant as he would be on time for a while and would then slip back again.

This witness left the hotel in February 2009.

The Tribunal also heard evidence from the current general manager and he has been in this post since August 2008. He has been eleven years in the business having started as a chef in South Africa and came to Ireland in 1999 where he worked in various hotels prior to joining the respondent. He stated that it is vital to have reliable staff as the hotel is 50% product and 50% service. The hotel is situated in a small town and is the only hotel for twenty miles. They worked hard to build up the business and the backbone of their business comes from weddings, funerals and birthday parties. 70% of their business comes from the local community. The hotel is part of the Issac group. During his first two weeks after his appointment he met all the staff including the claimant. He spoke with the claimant in relation to his role which included handyman work such as painting and store room work. His main duty was the stock and the ordering of same. This is a twenty-nine bedroom hotel and there were functions most Friday and Saturday nights. Each Tuesday the stock was assessed and the orders were placed by Thursday to ensure sufficient supplies until the following Tuesday. There were four main suppliers that they dealt with and the representatives would call and take the order. The claimant would go to the bar and stock room and count the stock and he had a laptop to facilitate him in placing the order. The function sheets go out every two weeks and all the business was based around the function sheets. Provision was made for the functions coming up and this had to be looked at on a weekly basis.

After witness joined the respondent he found that time sheets were not completed. On 29th September 2008 he put up two memos on the notice board in relation to time off and all of this information was taken from the employee handbook. There were three notice boards, one for general notices, one for rosters and time sheets and another showing the opening duties for the bar. There were time sheets for employees signing in and out. Witness was in charge of running the business and he needed to know where employees were at any given time. The claimant came to his attention as he could not cross-reference his attendance with the time sheets. Witness told the claimant to sign in and out and this was something that was done by all employees. The claimant's hours were 7am to 3pm, Tuesday, Wednesday and Thursday.

On Tuesday, 7th October 2008 witness was in work at 10.30am and one of the staff told him they had seen the claimant earlier on that day. The claimant had started work

on a wall but he had not painted it. Witness was looking for the claimant to finish the job but he could not find him. He proceeded to set up for a wedding and a funeral group was expected in at 1pm. He did not find the claimant and neither could he see if he had signed in. The group arrived after the funeral and they had booked for one hundred and twenty people. The last day the claimant was at work was Thursday and he would have known from the function sheets that the group was expected. The claimant should have ordered from the previous week to ensure sufficient stock was in place. The premises consists of a night club, function room and bar. The wedding was booked the previous Saturday, 4th October and they would usually have some function at weekends. On 7th October the bar staff said there was no Guinness and the Heineken was almost empty. The keg room was under the bar, the fridges were empty and they could not find any stock. Witness along with the bar man/duty manager went to the stock room and discovered that there were only one case of coke in stock and they were also low on other minerals, while there was a high stock of products they did not use. They took a trolley to a pub on the other side of the road and borrowed a keg of Guinness and Heineken while customers had to wait for approximately forty-five minutes to be served. Guinness and Heineken would be their biggest sellers. One of the funeral party commented on the length of time it took to serve the guests.

Witness and his colleagues tried to find the claimant throughout that day but they could not locate him. They checked the CCTV, they did not have his telephone number but they rang his wife's mobile number. Witness went to his house with two staff members and there was no response. They also searched the hotel back to front and the claimant could not be found. Witness left a note at the reception desk and told the claimant he was not to come back on the floor. By letter dated 9th October 2008, the claimant was suspended with pay pending a full investigation. The claimant was called to a disciplinary meeting on 22nd October 2008 to address stock irregularities and time keeping/management. A colleague attended the meeting as a witness for the claimant. The timeframe for ordering Guinness, beer and minerals was highlighted. The policy was that incoming orders were checked on arrival and placed in the fridge in date order. As a result of the claimant not adhering to this policy items to the value €1,500 could not be returned. If the ordering was done on a regular basis there should be sufficient stock. Orders had to be kept up to date. The claimant stated that there was enough Heineken (4-5 kegs per week) and he had placed an order the previous week. The stock of minerals was also very low. Guinness had not been ordered for six weeks and witness could not understand why this was the case. The situation could have been resolved if the claimant had told witness that stocks were low and this would have saved the embarrassment with customers. If the claimant had checked the stock on the Tuesday it should have been apparent that stocks were low for the funeral.

The claimant left work as there was a leak in his house but he did not tell anyone he was leaving. While the claimant said he would make up for the hours he was absent it was not acceptable. He was not satisfied with the claimant's explanation. In his discussions with other members of management they also had occasion to look for the claimant. The claimant was not escorted from the hotel, it was done in the most cordial manner. Witness is responsible for hiring and firing but he sought a second opinion from his boss. Having spoken with his boss it was decided that this could not be allowed to happen again, the business could not afford it. The

claimant's duties were an integral part of the respondent's business and the way witness saw it was that they had to have something to sell. The claimant was dismissed by letter dated 28th October 2008 and his termination of employment was effective from 24th October. He was given the option to appeal his dismissal and while the claimant did appeal he did not turn up to the appeal hearing scheduled for the 20th November 2008. The respondent rang the claimant when he failed to attend but there was no response. Witness would not contemplate re-instating the claimant as he could not be put in a position of trust.

In cross-examination witness stated that if the claimant had attended the appeal hearing he was to be one of the two-person panel and he considered himself to be impartial. He did not see the claimant's contract of employment as he was already employed when witness arrived at the hotel and it was his opinion that the claimant had been doing the job for some time. On the day in question the receptionist stated that she saw the claimant coming in to work on the Tuesday.

In relation to the appeal the claimant confirmed that he would attend the hearing on 20th November 2008, when he collected the letter on 19th November.

In answer to questions from Tribunal members witness confirmed that he started working with the respondent in August 2008 and in September he issued a letter in relation to staff signing in as he identified irregularities in respect of same. The claimant's job was to maintain the supplies. It was not his experience that while hosting a wedding the hotel could run dry. Maybe some staff were unhappy at his arrival as general manager but they did not make it known to him personally. As far as he was aware the funeral had been booked for the Thursday or Friday.

Claimant's Case:

The claimant gave evidence that when he initially commenced employment with the respondent in 1997 his role was that of general maintenance. The previous general manager requested the claimant to perform stock duties in conjunction with the duties of general maintenance. The claimant was trained in these duties and he worked three days per week. On Tuesdays he performed a stock count and ordered stock accordingly. On Wednesdays he performed general duties and on Thursdays he attended to delivered orders. Each week the claimant ordered sufficient stock for the following week.

In August 2008 there was a change in management and the new general manager was appointed. The claimant confirmed he met with the general manager not long after his appointment for an informal discussion. At that time the claimant was not required to sign timesheets but one week later he was informed that the general manager required him to sign in. However, the claimant could not find the timesheets. He asked a receptionist if she knew the whereabouts of the timesheets but she could not find them either.

On the morning of Tuesday, 7th October 2008 the claimant noticed a large water stain on his kitchen ceiling. The claimant reported for work at 7am and attended to his

stock duties. At 8am he informed the receptionist that he would not be in work the rest of the day and he returned home to attend to the water leak in his home. The claimant was unaware that a funeral function was booked for that day as he failed to check the function sheets prior to leaving work. He also omitted to provide the hotel with his new mobile phone number. The claimant was attending to the water leak in his house for the rest of the day apart from when he left the house to purchase materials at a hardware store.

The claimant attended for work on Wednesday, 8th October 2008 and worked as normal. However, when he attended for work on Thursday, 9th October 2008 a manager informed him that he was not to be on the premises until the general manager had spoken to him. The claimant subsequently received a letter dated the 9th October 2009 informing him that he was suspended with pay pending full investigation of a number of matters. The matters listed included failure to ensure adequate stock with particular reference to Tuesday, 7th October, failure to complete timesheets, leaving the hotel on more than one occasion without management knowledge and stock irregularities.

The claimant attended a disciplinary meeting on the 22nd October 2008. The general manager raised a number of issues including that the claimant was absent from work on Tuesday, 7th October and that the hotel was left without stock for the funeral function. This was the first time that an issue about stock was raised with the claimant. The hotel had a wedding reception the previous weekend and the stock was sufficient for that function but had depleted by the time the funeral function was attending at the hotel. The claimant offered to work on Friday, 10th October 2008 in lieu of the Tuesday. In relation to the other issues raised the claimant stated that he was unable to locate the timesheets to sign in and other than the day of the leak in the house he was only absent from the hotel if he was purchasing materials in a hardware store for his maintenance duties.

In relation to the issue raised about unnecessary stock the claimant stated that a large number of juice drinks had accumulated as they were given free of charge as part of an order.

When the claimant left the meeting with the general manager he felt that the decision was made and his employment was finished. The claimant received a letter of termination dated the 28th October 2008. The claimant lodged an appeal against this decision and attended at the time of the appeal hearing. However, he was then informed that the general manager was elsewhere and would only be in attendance at the hotel some two hours later. As the claimant has three small children he was unable to wait to meet with the general manager. The claimant stated that he did not receive his suspension pay from the hotel until the 4th December 2008. During his employment the claimant did not receive a copy of the staff handbook, a contract of employment and he was unaware of the respondent's disciplinary procedures. If the claimant had been given a warning instead of dismissal he would have corrected matters. The claimant gave evidence pertaining to loss.

In cross-examination it was put to the claimant that the general manager had put up notices regarding rotas and timesheets. The claimant stated that he did not check the board where these notices were placed. In relation to a notice placed on the board by the general manager on the 29th September 2008, the claimant stated that he did not

see this notice but the general manager had said the same thing to him directly. The claimant acknowledged that he was obliged to sign a timesheet but he was unable to locate the sheets.

The claimant stated that even if he had known about the funeral he could not have placed an order for stock as the order for that week had been submitted the previous Tuesday. He accepted that he could have secured stock from another source for the function if he had been aware of the function.

The claimant accepted that on that particular day he had a relaxed approach to the responsibilities of his job. The claimant could not explain why he did not inform a member of management that he was leaving work for the day. He thought that he would get to explain the situation to the general manager at a later time.

The claimant accepted that the respondent had to write off stock worth €1,500.00 as it was out of date and had not been returned to the supplier in time. The claimant accepted responsibility for this to a certain point, as there was some old stock there from before he started to take on stock responsibilities.

The claimant accepted that the minutes of the meeting on the 22nd October 2008 were a fair account of that meeting and that he was given an opportunity to give his account. The claimant believed his dismissal by the respondent was unfair, as he had not received any previous warnings.

The claimant confirmed that a sum of €2,860.00 was paid to him for suspension pay, holiday pay outstanding and minimum notice.

In reply to questions from the Tribunal, the claimant stated a manager was present on the 7th October 2008 but he informed the receptionist that he was leaving and thought that she would inform the manager.

Determination:

On the basis of the evidence adduced at the hearing the Tribunal must find the procedures used by the respondent were deficient. However, the Tribunal is of the view that the claimant contributed very substantially to his dismissal and accordingly awards the claimant the sum of €1,100.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal was satisfied from the evidence that the claimant received his entitlements under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997. Accordingly, the claims under these Acts are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)