

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD154/2009
MN156/2009

-claimant

against

EMPLOYER
EMPLOYER

-respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Ms M. Sweeney
Mr D. Mcevoy

heard this claim at Cork on 3rd February 2010

Representation:

Claimant: Paul Scannell B.L. instructed by Ms. Sheila Creedon, Hickey Dorney, Solicitors, The Square, Passage West, Co. Cork

Respondent: Mr David Gaffney, Coakley Moloney, Solicitors, 49 South Mall, Cork

The determination of the Tribunal was as follows:-

At the outset of the hearing the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

Dismissal in this case was denied and consequently the onus fell on the Claimant to open the proceedings.

Claimant's Case

Evidence was given by the Claimant of how he had commenced work at the Respondent's licensed premises at Rochestown, Cork on the 7th of June 2004. He was initially employed as one of three assistant managers. His work comprised of general bar work and staff supervision. There were some 20-22 employees including seasonal employees working in the premises and he reported to the general manager. He was not given a contract when he commenced his employment but was

handed a contract sometime in September 2005.

As far as he is concerned he never signed the contract. (A signed copy of the contract was produced during the course of the hearing and the Tribunal is satisfied that the signature on this contract is that of the Claimant).

He didn't receive overtime or bank holiday pay but took time off in lieu. The time off was organised among the bar staff themselves. This never gave rise to any difficulty.

The Claimant wanted to take holidays on the 24th and 25th of July and followed the usual practice of writing his request into the roster diary. The Claimant was satisfied that he had days in lieu in hand. On the 16th of July 2008 the Claimant received a telephone call at work from the accounts/wages clerk employed by the Respondent enquiring about his request. While he was talking to this person the Respondent came on the phone and the Claimant said that he demanded to know why he was paying him and another girl to do the same work.

The Claimant said that he found it difficult to reason with the Respondent and asked the Respondent to come over to the premises so that they could discuss the matter. During the course of that conversation he told the Respondent that he was fed up and felt like "putting the keys in the letterbox" as he felt that the Respondent was acting unreasonably. A short time later the Respondent arrived on the premises. The Claimant described the Respondent as being extremely angry and that he said words to the effect of "I'm not here for a discussion, I'm here for the keys, give me the keys, "As far as I'm concerned you walked", "you told me you were walking, the staff don't like you and the customers hate you".

The exchange became increasingly heated and a sales rep came into the premises while he was having this discussion with the Respondent and the Respondent walked straight over to the Rep saying "no way pal", grabbed the delivery docket and signed it which is something that the Claimant would ordinarily have done.

The Claimant asked the Respondent to bring in a third party to mediate in this situation as he felt it was getting out of control, and he was afraid that it would end in the loss of his job. He said that he refused to leave the premises or hand over the keys as he felt that the situation was quite farcical. Ultimately the Respondent said to him "give me the keys and f..... off".

They went into the beer garden where they had a further calmer conversation where the Respondent indicated that he felt that the Claimant should by now have a place of his own and that he should take some time off to do interviews. He said that he should "get cracking on the jobs front" over the next 6 weeks.

The Claimant later got a telephone call from the Respondent who told him that there was no need to come in the following morning and that he would pay him what he was owed and to call to the office for a cheque and his reference the following day. He called to the office the next day and he received a cheque for €1670.30 which was four weeks net pay and a further two weeks pay was lodged to his account in lieu of his notice entitlements. He was given a letter of resignation to sign which he felt he had no option but to sign. The Respondent was not present in the office when he called there on the following day.

During the next number of months the Claimant obtained a number of different jobs but the economic climate was deteriorating and he is now unemployed. He earned a little over €11,000.00

in the period between his dismissal and the present date.

Respondent's Case

Evidence on behalf of the Respondent was given by another assistant manager and by the Respondent himself. The most salient evidence was that of the Respondent. He said he purchased the premises in 2002 and the running of the pub was secondary to his main role of managing director of another company. He said however that he took his interest in the pub very seriously and regarded himself as being a problem solver.

The Respondent outlined certain interfaces that he had with the Claimant with regard to the day to day management of the premises but acknowledged that there had been no formal disciplinary or other serious issues between himself and the Claimant.

He said that on the 16th of July he was reviewing rosters in the office and he spoke to the Claimant about the time off he was proposing to take. He was outraged by the manner in which the Claimant spoke to him. He said that he cancelled a meeting to come to the premises to deal with the matter as he was concerned that the Claimant might leave the premises unattended.

He largely agreed with the description given by the Claimant of the events that transpired but took issue with the suggestion that he used strong language. He said however that he had a full and frank exchange of views with the Claimant. He felt that he was being given an ultimatum by the Claimant and the Claimant was effectively abandoning his job.

He acknowledged that the Claimant asked for a third party to be brought in to mediate between himself and the Respondent but that the individual named was on holiday and in any event that he himself had been solving problems for 20 years. He felt that the Claimant's attitude to him as his employer was totally unacceptable.

He denied that there was ever an agreement that the Claimant would work on for 6 weeks. Insofar as he was concerned the Claimant was resigning his position. He acknowledged that the substance of his original dispute with the Claimant, (the question of taking days off) was never discussed when he went to the premises.

Determination

Having heard the evidence the Tribunal is unanimously of the view that the Respondent failed in his duty as an employer to take such reasonable steps as he could to bring about a resolution to the relatively trivial problem that had arisen. His approach was excessively confrontational. The Claimant's request to introduce a third party to the discussions, which had clearly become passionate, was declined, and the Claimant was given no option with regard to the termination of his employment. He had to sign the letter of resignation the following day, in order to get his severance cheque and a favourable reference.

The Tribunal also finds however that the Claimant by making the inappropriate remarks that he did to his employer contributed significantly to the dilemma in which he found himself. The words he used, to the effect that he was going to throw the keys in the letter box would have undoubtedly incensed the proprietor of a licensed premises who would have been concerned that the premises may have been left insecure and unattended. The Tribunal finds that the contribution made to the dismissal by the Claimant himself amounts to one third.

The Tribunal finds that compensation are the appropriate remedy. The Claimant's loss amounts to

€44,000.00. The earnings which the Claimant has received in the interim period amount to €11,000.00, leaving a net loss of €33,000.00. Two thirds of this figure is €22,000.00 and the Tribunal makes an award of €22,000.00 by way of compensation in this case.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

