

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
MN1039/2009
UD1030/2009

- Claimant

against

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: Dr. A. Courell B.L.

Members: Mr. W. O'Carroll
Ms H. Henry

heard this claim at Galway on 12th April 2010

Representation:

Claimant(s): Ms Sara Horan, Sara Horan & Associates, Solicitors, Main Street, Oughterard,
Co Galway

Respondent(s) : James B. Joyce & Co., Solicitors, Clifden, Co. Galway

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. The respondent company provided board and lodgings for between 80 to 100 refugees. The claimant was employed as the head chef.

The residents were from various countries and sometimes tempers flared. A note on the door to the restaurant stated that there was to be no shouting at the staff or they would close the door. In the past there had been problems and the Gardaí were called.

On November 13th 2008 a resident (hereafter known as S) approached the counter to collect his lunch of a burger and chips. He asked the server for more cheese. The server did not know what to do as the staff had been told that everyone got the same portion of food but after service and if there was food left over it was given out to those who had asked for extra. If a resident was not happy with that they were told they could take it up with the 2 owners (hereafter known as M and P). The claimant approached S and informed him that there was a queue of residents behind him waiting to be served the same portion as everyone else. S said he wanted more cheese. The claimant told him if he did he go down and buy it in Supervalu. He explained that S had been previously given a special diet sheet but he had given it up after 2 weeks.

That evening he got a letter from M stating he had received a complaint from S who demanded a written apology. It also stated that this was the third complaint against him that week which was totally unacceptable according to the company's code of practice as laid down by the Department of Justice. M also wanted a written apology. He stated in his letter:

“Once again, I demand a WRITTEN APOLOGY from (the claimant) and I will escalate this complaint and others of all residents within the centre to the relevant authorities as this has got to stop.”

The following day he spoke to M who told him if he did not apologise there was no job for him. He felt he had not said anything insulting and did not feel he should have to apologise. On a previous occasion he had been assaulted by a resident who was later convicted of the assault. He had asked M to move this person but was told if he did they would lose a family of 6 and this would mean a decrease in the respondent's funding. He had never received an apology for the incident.

He gave evidence of loss. He tried but could not secure employment. He opened his own café 4 to 5 months after his dismissal.

On cross-examination he stated he had never seen the letter of complaint from S until the day of the hearing. 7 months into his employment he first received a copy of the code of practice. After a year working there the staff were sent on 2 courses – Anti Racism and Conflict Management. When asked, he said that he had spoken to S in a normal tone and felt he had done nothing wrong so he felt he did not have to apologise. He did request his P45.

Respondent's Case:

M gave evidence. He was part owner, with his wife P, of the business. The premises housed 80 to 100 refugees who were provided with board and lodgings including a weekly allowance of € 19 was provided by the State. It was a difficult centre to run and could be volatile. Residents were in limbo as to whether they would be permitted to stay in Ireland or returned home. They could be there from 6 to 12 months. All serious incidents were reported to the Department of Justice who had provided the respondent with their code of practice. They also decided who would stay on the premises. Problem residents had been moved in the past.

He explained that the food provided to the residents was a very important part of their life in the centre. Everyone was given the same-sized portion of food. If anyone requested more there were informed that if there was some left over after service they could have it. If the resident was not happy with this they were told to speak to him or P. Staff were expected to be polite and mannerly but things could get heated. If you made a mistake you apologised, he had done so himself in the past.

On November 13th he had been speaking to S before lunch. Some time later S came down to the office in the opposite mood he had portrayed earlier. He was distraught and felt humiliated at what the claimant had said to him. S gave him a letter of complaint demanding a written apology. He also forwarded a copy of his letter of complaint to 2 other bodies involved in working with refugees and integrating them into society if they were permitted to stay in Ireland.

He later briefly spoke to the claimant about the incident and gave him a letter stating he had received a written complaint from S who wanted a written apology. He also wanted a written apology. He felt it was not an unreasonable request but the claimant refused. The claimant's partner also worked on the premises. He spoke to her about the matter and said it might be good to let the claimant cool down over the weekend and then he would return to work.

He said S was a very pleasant man and a member₂ with his wife, of the residents committee. The

residents committee consisted of 6 residents and 4 outsiders. Monthly meetings were held and food was a very important issue on the agenda. The premises was very family based. There were no single residents.

On cross-examination he agreed the Gardaí had been called to the premises before. He said if the claimant had a problem with S not moving on in the queue he should have told him to come speak to him. The claimant did not deny saying what he said and therefore he felt it was not unreasonable to ask for an apology. Customer care was critical. He felt S's letter was not disproportionate to the incident; there had been previous issues with the claimant. The claimant and his partner were provided a house to live in while working for the respondent and they continued to live in the caretaker's house for another month after he left his employment.

When asked by the Tribunal he said that he had handed a copy of S's letter of complaint to the claimant when he handed him his letter. When asked whom the 2 bodies S had copied his letter of complaint to he replied that they provided support services to the respondent.

P gave evidence. She stated that her role involved administration and overseeing the needs of the females and children who resided there. She and M interviewed the claimant had when he was successful offered him the job and handed him an English version of the code of practice and his terms of employment. The claimant had fluent English. He was given a Polish translation of it around 7 months later. They also organised accommodation for him and later a job for his partner.

All staff knew to be polite and mannerly to residents and if there were any problems they were to tell them to go to the office. There were no security guards employed but there was CCTV for the safety of both staff and residents.

On cross-examination she stated that the person who had assaulted the claimant had apologised in court but the claimant was not present. M could not have apologised during that time as there was a criminal investigation taking place.

Determination:

Having heard all the evidence adduced, including the letter from M to the claimant, and having considered the submissions made on behalf of the parties, the Tribunal finds that the claimant was constructively dismissed and that it was an unfair dismissal. The respondent did not follow proper and fair procedures. Accordingly the Tribunal awards the sum of € 10,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established the Tribunal awards the sum of € 560, this being one weeks gross pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)