

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

- claimant

CASE NO.

MN402/09

RP396/09

UD386/09

Against

EMPLOYER

- respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr M. Noone
Mr S. Mackell

heard this claim at Naas on 3rd February 2010 and 7th April 2010.

Representation:

Claimant: In person on 3rd February 2010.
Mr. Peter Leonard BL instructed by Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1 on 7th April 2010.

Respondent: Mr. Shaun Boylan B.L., instructed by Mr Brian MacMahon, Arthur E. McMahon, Solicitors, Poplar Square, Naas, Co. Kildare

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent, a hotel, employs approximately 180 staff. The hotel has four functioning bars. It caters for weddings and private functions. During the summer season three bar staff are assigned to wedding functions.

In 2008 management became aware that there were discrepancies in stock control. They were concerned that stock was being taken and consumed by staff and that former staff were being given

stock free of charge. In August 2008 bar staff were asked to attend a meeting. The procedures for acquiring drinks from the stores were changed. Up to that time supervisors possessed master keys to access the stores. Bar staff were now required to report to the Duty Manager to gain access to the stores. The hotel operated a strict policy from then on. Breach of these procedures was deemed to be very serious.

The claimant commenced working for the respondent in mid September 2004. He had been an exemplary employee until July 2008 when the Bar Manager (WL) had to speak to him on occasion about his timekeeping. WL made the HR Manager aware of the claimant's lateness. His timekeeping still did not improve. When the claimant arrived late for work on 23rd August 2008 WL again informed the HR Manager. The HR Manager subsequently spoke to the claimant and issued him with a verbal warning and said she expected to see a marked improvement after that.

On 5th September 2008 the claimant ordered food in the Nuns Kitchen. The bill was not put through the management account. A bar supervisor (JU) brought this to WL's attention. WL subsequently brought the incident to the HR Manager's attention.

Following this incident the claimant was requested to attend a disciplinary meeting on 15th September 2008 with the HR Manager. He was questioned about the incident on 5th September 2008. That night the claimant contended that he had been requested by the Duty Manager (GB) to go to a sister hotel (L) to acquire a bottle of morgan spice for a customer. During his absence from the hotel he had missed his break. There was no food left in the hot box for him (food is placed in this box for staff after wedding meals have finished). The claimant was given permission by WL to go to the Nuns Kitchen to acquire food for himself and his colleague (A). He said he voided the order off the system. The claimant then became frustrated at the meeting. The HR Manager had noticed a change in his attitude and behaviour. The claimant said he was tired working late nights and needed a change in career. He had become disillusioned. He had applied for the Bar Manager position in July 2008 but was unsuccessful. The claimant was issued with his first written warning.

The claimant texted WL on 6th October 2008 to say that he would be a little late and was still a bit drunk. WL subsequently informed the HR Manager. The claimant was asked to report to the HR Manager's office. The HR Manager questioned him about the text message and told him that this was unacceptable. She told him to return home but to check the roster to ascertain when he was due in again. She requested him to attend a meeting with her on 10th October 2008.

On 7th October 2008 the HR Manager was made aware that the claimant was in the stores. The claimant was not rostered to work that day. She asked WL to tell the claimant to report to her office at 4 pm. The claimant was insistent that she (HR Manager) had asked him to do stocktaking that day. The HR Manager had not. The Duty Manager had given him the keys to the stores. The HR Manager deemed his actions to be extremely serious.

The HR Manager together with the General Manager and the claimant attended the meeting on 10th October 2008. The claimant was questioned on his lateness at work on 6th October 2008 and his coming into work unexpectedly on 7th October and his unauthorised access into the stores. The claimant had acquired keys from his colleagues D and F. The HR Manager said a proper investigation needed to be carried out. The claimant was subsequently issued with a final written warning and was suspended with pay. A further meeting was scheduled for 17th October 2008. The HR Manager interviewed bar staff. It came to light that the claimant absented himself frequently from functions and never informed staff where he was going. He had been seen drinking

and smoking with a colleague in the Nuns Kitchen. On one evening while he was rostered he had informed staff that his dog was missing and that he had to go home. The claimant was absent for several hours that evening. On one occasion he had given his friends beverages and said that he would look after the bill. The bill was not honoured. Staff were distressed, tired, fed up and had threatened to leave. The HR Manager together with the General Manager made the CEO aware of their findings.

The CEO chaired the meeting on 17th October 2008. The claimant chose to have a witness present. The claimant was again questioned as to why he reported for work on Tuesday, 7th October 2008 when he was not rostered and why he entered the stores without authorisation. After the meeting with the claimant on 10th October 2008 the HR Manager had spoken to bar staff. She became aware that he was frequently away from his workstation and took frequent breaks, was often in the back office and had been seen drinking and smoking in the Nuns Kitchen. The claimant was questioned on his absences from work. Regarding his absence from his workstation on 9th October 2008 the respondent was satisfied that the claimant had not in fact left the premises that evening. He was asked why he was frequently in the back office. He replied that he had to attend to rosters. The CEO concluded the meeting by saying that he wanted to carry out further investigations. The next meeting was scheduled for 24th October 2008.

At the meeting on 24th October 2008 the CEO addressed the issues. He said he was satisfied that the claimant had a pattern of lateness, there was a disimprovement in his work performance, that he had consumed alcohol on the premises and that he supplied drinks to former employees and that he did not charge for these drinks. The CEO was also satisfied that GB did not authorise the claimant to order food in the Nuns Kitchen. The CEO was satisfied that he had grounds to dismiss the claimant. The claimant was subsequently dismissed.

Claimant's Case:

The claimant commenced employment on 15th September 2004 as a Kitchen Porter. After some time he secured the position of Bar Supervisor. Ninety five per cent of his time he worked at wedding functions. He commenced work between 1 and 2 pm and worked till 3 or 4 am. In 2006 he was runner up employee of the year. In mid 2008 he applied for the position of Bar Manager. At the interview he was informed that he did not have enough experience. At that time he had completed the first year of a bar management course.

On 22 August 2008 he returned to Ireland following his holidays. That evening he received a telephone call from a colleague who asked him if he could swop his shift with him the following day. He agreed to do this. He spoke to WL and there was no problem. WL thanked him for offering to cover the shift. The claimant said he might be in a little late the following day. He was due in at 1 pm and was about five minutes late. WL saw him at about 1.30 pm.

On 5th September 2008 while working at a wedding function the groom asked for a particular drink. This was not in stock. The Duty Manager asked him to go to the respondent's sister hotel (L) to enquire if they had the drink in stock. They did not.

During wedding speeches staff are permitted to have their breaks. When the claimant returned from hotel L the hot box where the staff food was kept was empty. He asked the Duty Manager GB if he could organise food for him. GB was too busy. He spoke to another Manager who was unable to assist. He had the choice of the restaurant kitchen or the Nuns kitchen. He again spoke to GB. GB said he could order food and void the bill with his own key. The Head Chef said he

needed a docket. He ordered food for himself and his colleague (A). He went back to the till and voided the bill and threw the docket in the bin. As far as he was concerned everything was fine. JU had taken the food out of the kitchen and enquired where it was for. The claimant said that it was for upstairs and that it was ok and he took the food and left. He never considered that this could be the subject of a disciplinary matter. He was most disappointed.

Both he and a colleague (A) were asked to meet the HR Manager and the General Manager on Monday, 15th September. Each of them was called in separately. He overheard his colleague being accused of eating food in the Nuns Kitchen. When he was called in he was informed that he had broken procedures. The claimant said he had the Duty Manager's permission. At that meeting he was very upset. He felt that both the HR Manager and the General Manager would not listen to him. It was pointed out that he had taken food illegally.

The claimant asked if he could take leave on 6th October 2008. Initially he was told it was ok but then he was told he would have to come to work to do the stock requisitions. Before 9 am that morning he texted WL and informed him he would be a little late. At 12 o'clock he was asked to meet the HR Manager. He tried to explain his lateness but the HR Manager would not listen. She told him to go home and to come back to work the following day. As he attended college each Tuesday (his day off) from 9 to 1 he said he would be in between 2 and 2.30 pm. At 2.15 he telephoned the Duty Manager and asked him to open the store for him, as he had to count empty bottles. His colleague (F) assisted him. Some time later WL told him to report to HR. The HR Manager enquired why he was at work that day. She said he had not been rostered to work. The claimant contended that she told him the previous day to swap his days but she denied this at the meeting.

His understanding of the meeting on 17th October 2008 was to discuss the reasons for his suspension from work. Further issues had come to light. He was questioned as to why he was regularly in the back office, that he took frequent smoking breaks, he was hard to find and occasionally left the premises. As far as he was concerned no one wanted to listen to him. He was told he had been seen smoking and drinking in the Nuns Kitchen. The claimant said he did not drink on the premises but had smoked. The CEO concluded the meeting saying he wanted to investigate matters further. The claimant was asked to attend another meeting on 24th October 2008. At the meeting on 24th October 2008 the CEO was satisfied that there was a pattern of lateness, his performance had deteriorated and a decision was taken to dismiss him.

His colleague A told the Tribunal that the claimant had trained her in on the job. She deemed him to be a good employee and very helpful. He was diligent and efficient. Staff had from time to time ordered food in the Nuns Kitchen and no paperwork was required for this.

The claimant established loss for the Tribunal. He secured employment some four weeks after his dismissal and is still in employment.

Determination:

The Tribunal carefully considered the evidence adduced at this two-day hearing. The Tribunal finds that the procedures adopted by the respondent were seriously flawed and the claimant was not afforded a right of appeal.

The Tribunal determines that the claimant was unfairly dismissed, however, it is considered that he contributed significantly to his own dismissal. In the circumstances, the Tribunal awards him

€500.00 under the Unfair Dismissals Acts, 1977 to 2007. The Tribunal also awards the claimant €988.00 being the equivalent of two weeks notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

As remedies under the Redundancy Payments Acts, 1967 to 2007 and the Unfair Dismissals Acts, 1977 to 2001 are mutually exclusive, the redundancy claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)