

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL OF:**

**CASE NO.**

EMPLOYER

- appellant

UD2245/09

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE

- respondent

**under**

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr. J. O'Neill  
Mr. S. O'Donnell

heard this appeal at Naas on 17th February 2010 and 17<sup>th</sup> May 2010.

#### **Representation:**

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

Respondent: Mr. Mark Stafford, Niall P. O'Neill, Solicitors, 35 South Main Street, Naas, Co. Kildare

The determination of the Tribunal was as follows:-

This case came by way of an appeal by the employer (the appellant) against the recommendation of the Rights Commissioner (ref. r-076238-ud-09/JC)

#### **Appellant's Case:**

The appellant, a hotel, employs approximately 180 staff. It caters for conferences and functions and has 141 bedrooms. The accommodation area is comprised of an accommodation manager, three supervisors, two linen porters and accommodation assistants. Weekends are very busy. Accommodation supervisors assist accommodation assistants in their duties. Four to five staff report to the accommodation supervisor. The hotel has an old block and new block.

An induction course is carried out with each new employee and new staff are given job descriptions. Staff are taken through the HR manual and new entrants sign off on an induction checklist provided they fully understand the procedures. An employee handbook is furnished to each employee and one is displayed in the canteen.

The respondent commenced working in the hotel as an accommodation assistant in 2002. She had regularly been nominated for staff member of the month and was an excellent worker. She had attended many training courses and was diligent. The respondent was furnished with the English version of her handbook. No translation was furnished. Staff don't sign off on the handbook if they do not understand it. She was promoted to accommodation supervisor in 2005.

On 21<sup>st</sup> August 2008 an accommodation assistant, KT met with the HR Manager and made a formal complaint about the respondent. KT was very upset and said the respondent was treating her unfairly. She felt bullied and intimidated. She disliked coming into work, felt anxious and nervous. The respondent was constantly picking on her over little things. Every day the respondent asked her to return to rooms and clean them properly. The respondent referred to her as being lazy. On one occasion the respondent shouted at her and asked her if she was on drugs. This was done in the presence of guests. The respondent constantly spoke to her in Lithuanian or Russian and she did not understand her, as she did not speak either language. When KT was talking to the respondent on one occasion she saw cans of beer in the respondent's bag and also smelt alcohol off her. She was nervous when she was rostered to work with the respondent. She worked approximately twelve days a month with the respondent.

The HR Manager had never come across such behaviour. She took written notes at the meeting and KT signed them. KT signed a typed account of the meeting at a later stage. Following this allegation BF immediately started an investigation. As the respondent was on leave she reported the allegation to the accommodation manager (LM). LM confirmed that she had received a complaint from accommodation assistants concerning the respondent's behaviour towards staff. LM contended that the claimant treated non-Lithuanian staff badly.

The HR Manager met the respondent on 4<sup>th</sup> September 2008. She informed the respondent that she had received a formal complaint from a member of staff in the accommodation department, that the complaint was of a very serious nature and would have to be investigated. The respondent was invited to attend a meeting the next day to discuss the matter in more detail.

The HR Manager also met with the accommodation staff on duty on 4<sup>th</sup> September 2008. She informed them that she had received a formal complaint from a member of staff against the respondent. Three employees did not wish to become involved. The HR Manager had no problem with this. She subsequently spoke to several employees that day and took written notes at each meeting. Accommodation assistant SS was aware that some staff had paid the respondent the sum of €300 for their jobs. SS said that the respondent treated Polish staff unfairly and called them stupid. She had witnessed the respondent drunk on one occasion. SS did not wish to sign a statement. Accommodation assistant AD contended that the respondent treated all new staff badly and that she had no respect for KT. Accommodation assistant J had told AD that she had paid the respondent for her job. AD had often worked with KT and found her to be a good worker. AD had often smelt alcohol off the respondent. Accommodation assistant IZ paid the claimant €300 for her job. IZ was absolutely terrified. She often smelt alcohol from the respondent.

The HR Manager together with LM met the respondent on 5<sup>th</sup> September 2008. The HR Manager told the respondent that she had been made aware of allegations against the respondent, which were bullying staff, possession of alcohol in the workplace and taking money from staff for their jobs. The HR Manager suspended the respondent with pay that day in order to carry out a full and proper investigation. A further meeting was scheduled for 16<sup>th</sup> September 2008. At that meeting the respondent was asked if she had prepared a written statement. She had not but responded verbally

to the accusations. The respondent said KT had constantly forgotten to do things and she had to ask KT to go back and finish certain jobs. The respondent said she never shouted at staff, sometimes called them lazy. She denied taking money from staff for their jobs in the hotel. She also denied drinking at work but said that sometimes she brought a can or two with her to work for her own consumption after work. The HR Manager concluded the meeting by saying that she wished to speak to other staff members and investigate further. The next meeting was scheduled for 24<sup>th</sup> September 2008.

On 18<sup>th</sup> September 2008 the HR Manager spoke to accommodation assistant AO. AO found the respondent difficult to work with. AO had encouraged KT to speak to the HR Manager about her complaint. She had seen alcohol in the respondent's bag and smelt alcohol from her. The HR Manager also spoke to accommodation assistant KK on 18<sup>th</sup> September 2008. KK looked for a transfer out of the accommodation department, as she could no longer work with the respondent. She had seen cans of beer in the respondent's bag and said a lot of staff had paid the respondent for their jobs. MJF, an accommodation supervisor, worked with the respondent twice a week. She had witnessed the respondent shouting at KT.

On 19<sup>th</sup> September 2008 the HR Manager spoke to more staff members. Accommodation assistant UN said she was not happy working with the respondent. The respondent accused her of being blind. She too said that the respondent treated new staff badly. ZD, a supervisor, did not like working with the respondent. She said the respondent treated new staff badly. She contended that KT worked very hard.

On 23<sup>rd</sup> September 2008 the HR Manager spoke to accommodation assistant AM who also confirmed that the respondent treated new staff very badly. The respondent accused her of being stupid and being blind. She had felt intimidated and humiliated by the respondent.

The HR Manager contended that the whole accommodation department was in chaos. Staff were petrified and anxious. In her view the seriousness of the allegations warranted gross misconduct. The allegations had been put to the respondent and they had looked for her response.

The HR Manager, the General Manager the claimant and her representative attended the meeting on 24<sup>th</sup> September 2008. Following the HR Manager's meetings with nine accommodation staff, she furnished the respondent with written accounts of each meeting. The respondent was asked to prepare her own written account in response to these allegations. She was asked to attend a disciplinary meeting on 26<sup>th</sup> September 2008.

The HR Manager, the General Manager, the respondent and her representative attended the meeting on 26<sup>th</sup> September 2008. The respondent was asked for her response to the allegations made against her. The respondent did not have a written statement but again responded to each allegation. The respondent said she did not bully new staff, she had never requested money from staff in the accommodation department and that she had only once been in possession of cans of alcohol in the workplace. These were for consumption after work hours. She never drank on the premises. The HR Manager concluded the meeting and invited the respondent to a further meeting on 1<sup>st</sup> October 2008.

Between 26<sup>th</sup> September 2008 and 1<sup>st</sup> October 2008 the HR Manager met the CEO, the MD and a legal representative separately. Having discussed the serious allegations with the General Manager, the CEO and the MD all were in agreement that the respondent should be dismissed.

At the final meeting with the respondent on 1<sup>st</sup> October 2008, the HR Manager based her findings on the three allegations against the respondent, unfair treatment of new staff, taking money from staff and being in possession of alcohol in the workplace. The HR Manager said she had no option but to terminate the respondent's contract of employment effective from 1<sup>st</sup> October 2008. By letter dated 5<sup>th</sup> October 2008 the respondent was informed in writing of her dismissal.

The HR Manager told the Tribunal that she had made up her mind that the seriousness of the allegations did not merit an appeal. She was alarmed at the extent of fear in staff and it wasn't a normal case of bullying. She needed to take the health and welfare of staff into consideration.

### **Respondent's Case:**

The respondent commenced employment on 22<sup>nd</sup> May 2002 as an accommodation assistant. At that time her command of English was poor and she attended an English course. Two years later she was promoted to accommodation supervisor. She had no problems with any of her managers. She was responsible for organising rooms, looking after lost property and supervising staff. In the old block she was responsible for 35/40 bedrooms and in the new block 18 bedrooms. Her induction course lasted approximately five minutes and she did not understand many things. Responsibility fell on the supervisor to ensure all rooms were properly cleaned. The respondent expected 100% from staff. No copy of the employee handbook had ever been furnished to her.

When new staff commenced employment the respondent spent much time training them. Accommodation assistants had complained to her about KT's slowness in work and she in turn spoke to KT about her work. Other supervisors and herself spoke to the General Manager about KT's work performance. When LM commenced work she disliked the respondent. On one occasion the respondent had to speak to KT about an unclean room and asked KT what was wrong with her and was she on medicine.

Once the respondent brought cans of alcohol to work in her bag and left them in a filing cabinet. These were for a party she was going to after work. She never drank during working hours. She had been asked by individuals to help them prepare CVs and recommend them for work in the hotel. She had never asked them for payment.

Following the respondent's return from sick leave she was asked to attend a meeting on 4<sup>th</sup> September 2008 with the HR Manager. It was at this meeting that she became aware of a formal complaint being made against her from a member of staff in the accommodation department. She was asked to attend a meeting on 5<sup>th</sup> September 2008 to discuss the complaint in more detail. In addition to the allegation of bullying staff, two further allegations were made, the possession of alcohol in the workplace and taking money from staff for their jobs in the hotel. At no time during this meeting had the HR Manager indicated how serious the matter was or that she could lose her job. She was suspended on full pay to allow a full investigation to take place. She was asked to prepare a statement in response to these allegations and to attend another meeting on 16<sup>th</sup> September 2008.

The respondent replied verbally to all the allegations made against her. She never shouted at new staff and never spoke in her own language to non-Lithuanian staff. KT constantly forgot to do things and she had to constantly ask KT to re-do certain jobs. She denied taking money from staff for their jobs. While she had brought alcohol into the workplace on one occasion for consumption after work she never drank at work. The meeting concluded with the HR Manager saying she would have to speak to other staff. The next meeting was scheduled for 24<sup>th</sup> September 2008. The

respondent was furnished with nine statements taken from staff.

A disciplinary meeting took place on 26<sup>th</sup> September 2008. The allegations made against the respondent were again discussed. She responded to all of these. That meeting concluded with the HR Manager indicating that they needed to consider her responses and their need to make a decision. A further meeting was arranged for 1<sup>st</sup> October 2008. At that meeting the HR Manager discussed her findings, which were that the respondent had failed to act with dignity and respect when dealing with new staff, that she had taken money from staff and had been in possession of alcohol in the workplace. The respondent was informed that her contract of employment was being terminated with effect from that day, 1<sup>st</sup> October 2008. By letter dated 5<sup>th</sup> October 2008 she was formally notified that she was being dismissed. She was paid all monies owed to her. She was not offered a right of appeal.

The respondent has not secured work since her dismissal.

**Determination:**

The Tribunal has carefully considered all the evidence adduced over the course of this two-day hearing. This case comes before the Tribunal on appeal from the Rights Commissioner. As such, this is a de novo hearing and the onus rests with the appellant (employer) to establish that it was entitled to terminate the respondent's employment.

A complaint was made against the respondent by one of the accommodation staff who indicated that she was being bullied and picked on by the respondent.

The HR Manager professed shock at the allegation being made and immediately conducted interviews with all members of the accommodation staff. The information gleaned two further irregularities namely the possession of alcohol in the workplace and kick back type payments from co-employees who had secured employment within the company.

The respondent accepted that she had brought alcohol onto the premises on one occasion in circumstances where she was attending a party directly after work.

The respondent denied receiving monies from co-employees and denied bullying any member of staff though acknowledged that she had to constantly double check the standards of work conducted by the accommodation staff and that was her job as supervisor.

It is noted that no difficulty arose relating to the respondent's standard of work. The accommodation staff apparently got the job done though the respondent said that she had to put pressure on her subordinates to ensure that the work was up to standard.

Despite the good record of performance the HR Manager accepted that the complaint made was legitimate and needed to be fully investigated. In interviewing the staff the HR Manager became convinced that the accommodation department was being run in an atmosphere of fear and intimidation.

The Tribunal has had the benefit of hearing the oral evidence of some of the complainants and cannot agree that the situation was as extreme as described by the HR Manager.

There was no compelling evidence that the respondent received monies for getting employment

from co-employees as it is accepted that the respondent was not interviewing and selecting staff, that this was the work of management and had nothing to do with the respondent.

Regarding the issue of alcohol the Tribunal does not consider that the holding of alcohol on one occasion in advance of an evening out was a sackable offence and should only ever have resulted in a warning.

Of concern to the Tribunal was the manner with which the investigation was conducted and the disciplinary process was pursued. On paper, the company has a disciplinary process and a bullying and harassment policy though these were not properly followed and should never have been merged as one process. There was no independent assessment of the evidence being relied upon and the person to whom the complaint was made became the investigating officer and the decision maker. Whilst the company suggested that the decision to terminate was reviewed by the CEO this seems to have been little more than a rubber-stamping exercise and certainly was not an appeal. Crucially, the right of appeal was denied to the respondent.

On that basis the decision to dismiss was unfair in all the circumstances and this aspect of the rights commissioner's recommendation is affirmed.

The Tribunal varies the Rights Commissioner's findings regarding the respondent's liability regarding the possession of alcohol, as this should never have been grounds for terminating her employment.

In assessing loss the Tribunal notes the passage of time since the Rights Commissioner's findings though further notes that the respondent's efforts to find employment should have been more pro-active.

The Tribunal awards the respondent €18,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)