

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE–**claimant**

UD2144/2009

MN1984/2009

against

EMPLOYER  
–**respondent**

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. O. Madden B.L.

Members: Mr. T. O’Grady  
Ms. M. Maher

heard these claims at Dublin on 9 June 2010

**Representation:**

Claimant: Mr. Peter O’Brien B.L. instructed by  
Mr. Aaron McKenna, Aaron McKenna Solicitors,  
Berkeley House, Ballybin Road,  
Ashbourne, Co. Meath

Respondent: Mr. Michael McNamee B.L. instructed by  
Mr. Robert Taylor, McKeever Taylor Solicitors,  
31 Laurence Street, Drogheda, Co. Louth

The determination of the Tribunal was as follows:

The respondent was the licensee of a public house in Drogheda from 2005. The claimant was the bar manager with the previous licensee from October 2001 and continued in this position with the respondent. It is common case that the public house remained open beyond its licensed hours on a frequent basis although the extent of this is in dispute between the parties. It is further common case that there was an arrangement between the public house and a local bookmaker to facilitate the placing of bets by patrons of the public house. There was no written contract of employment, terms and conditions or disciplinary and grievance procedure.

The employment was uneventful until some time in May 2007 when, after closing time, the

claimant was cleaning up and the respondent came to the public house with some friends to shoot pool. An argument broke out between the claimant and the respondent during which the respondent told the claimant he was sacked and demanded his keys. It is accepted that one of the respondent's friends remonstrated with the respondent over the way he had treated the claimant. The claimant was on pre-booked leave the next few days and received an apology and reinstatement by text. It is the claimant's case that things between him and the respondent were never the same after this incident.

On 11 October 2007 the respondent issued a verbal warning to the claimant in relation to his being under the influence of alcohol while at work on 29 September 2007. On 4 March 2008 the claimant received a written warning from the respondent in relation to serving alcohol until after 8-00am despite several warnings and in regard to money going missing from the afore-mentioned betting arrangement on Monday 3 March 2008. In regard to the latter complaint it is accepted that all staff were stopped €50-00 to make up for the losses. The claimant signed a copy of this warning in acknowledgement of receiving it.

On 17 November 2008 the respondent wrote to the claimant stating there needed to be an investigation into an allegation that the claimant may have been working under the influence of alcohol on 24 October 2008. He was invited to a meeting to discuss this on 25 November 2008, given the chance to be accompanied and warned that the sanction could be up to and including dismissal. On 25 November 2008 the claimant was issued with a final written warning in relation to his working whilst under the influence of alcohol on 24 October 2008. Again the claimant signed this document in acknowledgement.

On 11 December 2008 the claimant was requested to attend a meeting that day to discuss the allegation that the claimant turned up late for work on both 26 November and 2 December 2008. Before the respondent had formally notified the claimant of the outcome of the disciplinary hearing held on 11 December the claimant was assaulted, whilst in the public house but off duty, on 19 December 2008 as a result of which he was briefly hospitalised. Although the claimant made a speedy physical recovery and took only one day off work he was hospitalised again in January 2009 for four days after collapsing at work with stress brought on by the assault. On 14 January 2009 the claimant received a letter from the respondent that amounted to a further final written warning to apply for a period of six months from 11 December 2008. Once again the claimant signed this in acknowledgement.

On 28 February 2009 the respondent wrote to the claimant alleging that on Sunday 22 February 2009 the claimant had kept the public house open after hours and was serving alcohol after hours. The claimant was called to a meeting to discuss this issue on 5 March 2009. He was again invited to be accompanied and informed that dismissal was a possibility bearing in mind his previous record. The claimant met the respondent on 5 March and was dismissed at the meeting with immediate effect the dismissal being confirmed in a letter of 6 March 2009.

The respondent's position was that the public house was kept open until after 8-00am at which time cans of beer were being sold. The claimant's position was that he was forced to stay in the public house because, due to a broken smoke alarm, he was unable to set the alarm system and wanted to protect the respondent's money. The weekend in question the respondent was out of the jurisdiction.

The respondent's position was that the premises stayed open sometimes until 2-30 or 3-00am and very occasionally until 4-00am. The claimant's position was that it was not infrequent to stay open

until the next working day and the respondent was well aware of this.

It was submitted on behalf of the respondent that the claimant had been given plenty of rope but eventually it all caught up with him. It was submitted on behalf of the claimant that in the absence of any set procedures and it being conceded that late opening was a regular feature of the arrangements of this public house it was not for the claimant to set the parameters of what was acceptably late opening.

### **Determination**

In a case such as this where there appears to be a wholesale disregard for the regulations that control licensed premises the Tribunal is required to look at the reality of the situation which confronted the respondent after the late opening on 22 February 2009. The claimant was on a final written warning for working under the influence of alcohol issued on 25 November 2008. He received what was effectively a second final written warning in regard to being late for work on two occasions, which was backdated to 11 December 2008. However the Tribunal does not accept the respondent's evidence that the claimant was well aware of the limits placed on late opening by the respondent. In fact the Tribunal is satisfied that the respondent accepted that the public house not infrequently stayed open into the beginning of the next working day. For this reason the Tribunal finds that the dismissal was unfair. There was a high degree of contribution, in excess of 50%, to this dismissal by the claimant and the Tribunal measures the award under the Unfair Dismissals Acts, 1977 to 2007 at €15,000-00.

The Tribunal further awards €2,260-00, being four weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005

Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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