

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

- claimant

CASE NO.
MN1004/2009
UD986/2009
WT436/2009

against
EMPLOYER

- respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr D. Hegarty
Mr F. Dorgan

heard this claim at Cork on 17th June 2010

Representation:

Claimant(s) : Ms Deirdre Cummins BL instructed by:
Mr. Vincent Toher, Vincent Toher & Co., Solicitors, Legal Chambers,
2 Washington Street West, Cork

Respondent(s) : Mr. Eoin Clifford BL instructed by:
Mr Finbarr O'Leary, Michael Powell, Solicitors, No 5 Lapps Quay, Cork

The determination of the Tribunal was as follows:-

Respondent's Case:

The Managing Director of the respondent company gave evidence. He explained that his company was involved, amongst other things, in the running of two car parks in Cork city. One in Grand Parade and the second in Patrick's Quay. The claimant was employed as an attendant in Grand Parade having commenced employment in February 2007.

He explained that when a customer entered the premises they were given a ticket with the time they entered the premises. On leaving the customer produced the ticket and paid the fee. If the customer lost the ticket the attendant would complete a docket with their details and both signed it. The customer would be charged a fee of € 15 for the lost ticket but if the customer was a regular they can use their discretion and may only charge € 5. The white docket was put with the money accumulated that day and the yellow docket remained in the book. The returned paid

tickets and any white dockets completed should tally with the money taken in that day.

The witness explained that the money did not always tally up at the end of the day. Most attendants showed an over or under of cash of between € 7 to € 20 daily. The only person who seemed to tally within € 1 or € 2 was the claimant. In March 2008 the witness became concerned about the claimant's work. During May 2008 the claimant was on leave. Other attendants plus the Manager covered his shifts. During this time the end of day cash did not tally and was over or under € 10 to € 20. However on the claimant's return he could again tally it between € 1 or € 2.

When asked, he stated he had given the claimant written warnings in the past and had discussed them with him. These related to his abusive behaviour towards customers and his timekeeping. The witness also noticed trays of drinks and other items in the car park. The claimant told him, when asked, that some of the customers really liked him and gave him free gifts. Another issue came to his notice. The claimants completed white dockets for lost tickets only had a fee of € 2 on them. He discussed the issue with the Manager and decided to set up a "sting".

He asked the Manager to go to the other car park and remove € 10 and plant it in the claimant's till. The claimant did not declare he was € 10 over that evening. They again planted € 17 in the till and again it was not declared by the claimant. On the third occasion € 50 was planted but the evening's takings were down € 2.

On another occasion he asked a friend to enter the car park and get a ticket. He met this friend and took the ticket. He told his friend to declare the ticket lost when leaving and explained the booklet that would be completed with his details and his signature. He later met his friend and took the completed receipt for a fee of € 15 paid to the claimant. The next day the witness checked the booklet to find the claimant had entered a fee of € 2. This happened on two occasions.

In November 2008 the claimant went on two weeks unpaid leave and again, in his absence, the money did not tally and was under or over € 10 or € 20 daily. On December 8th 2008 he asked the Manager to ask the claimant to a meeting at his office. All the evidence was put to the claimant and he put his hands up and said he had done it, that everyone had a weakness and that greed was a terrible thing. He took a set of keys out of pocket, put them on the table and said the lads would not want to work with him anymore. He told the claimant they could work it out, things like this had happened with other staff in the past and it had been resolved. The claimant got up from his seat, shook hands with the witness and the Manager and left. The witness could not believe the claimant had admitted to it and thought he would come back and talk to him about it but did not. The claimant rang his colleagues and told them he was leaving.

He wrote to the claimant on December 11th 2008 stating that the meeting of December 8th had been an investigation into certain issues but because of his admission of guilt and in accordance with the company's policies and procedures he was dismissed for gross misconduct.

On cross-examination he stated he had not dismissed the claimant without seeking legal advice first. When put to him he said there had not been an envelope on the table with the claimant's name on it but there had been a file with all the evidence concerned on it. He again went through the process of completing the lost ticket booklet and the "stings" carried out.

When put to him he said that it was hard to calculate how much the till was down and agreed the system used was not fool proof. He agreed that some people could be "bad calculators" when tallying up the takings. He stated the claimant had been given a temporary contract like all staff as the company was unsure at first what they would do with the premises. He was also given a copy of the company's policies and procedures. When asked why he did not have any copies of the claimant's file he explained the offices had been destroyed in the flooding of 2009.

He stated he had no intention of dismissing the claimant on December 8th 2008. It was the busiest time of the year and one of the busiest days. He had not told the claimant what the meeting was about prior to it commencing and had not offered to bring someone with him as he thought this was just an investigation into the matters.

When asked by the Tribunal he stated that since this incident the ticketing system had changed. He said he had not dismissed the claimant; the claimant had resigned on December 8th 2008.

The Manager and supervisor of the claimant gave evidence. He explained that he sometimes found it hard to balance the evening's takings and tickets. He stated he had spoken to the claimant about complaints against him by a female customer after she had complained to him about the matter. He also reprimanded him for his lateness. The claimant was always late on Monday mornings. He stated that the claimant's white tickets were always for € 2 and the time written on them was 2.00 pm to 3.00 pm.

He had told the claimant about the meeting with the Managing Director and had attended it. The claimant had admitted he had done it and had said greed was a terrible thing. He threw down the keys, shook hands and left. The witness left 20 minutes later and saw the claimant at the bus stop and offered him a lift. They went back to the car park where the claimant picked up a set of keys. He told the witness he was not returning to work.

On cross-examination he stated that he had been aware of the "stings". He had put money in the till but the claimant was still able to balance it at the end of the day. The claimant's P45 was not sitting on the table at the meeting. The claimant had not been dismissed.

A former colleague of the claimant gave evidence. He stated he had been working with the claimant on December 8th 2008. The claimant got a call and had to go to the office. One hour later he returned with the Manager and said he was "gone" and to look after his stuff. He later told the witness that the tickets had been put before him and had admitted it stating greed was a terrible thing.

On cross-examination he stated that the claimant had not taken his belongings off him that night as he had finished his shift and was at home when the claimant rang him. The claimant told him he was contacting his solicitor. He said when the tickets had been put to him he had held up his hands.

Claimant's Case:

The claimant gave evidence. He explained that he was a former Garda, had then lived in Hong Kong but had returned to Ireland to look after his parents who he visited every weekend. He worked Monday to Friday on either the 7.30 am to 3.30 pm shift or the 11 am to 7 pm shift.

He explained that on average there would be 300 cars through the car park daily. The till never balanced and he could be under or over € 2 or € 3 but it could be up € 17 or down € 7. He went on holidays and on return was not informed of any problems. He explained there had been minor incidents with customers in the past but did not recall an incident on August 3rd 2007 where the Gardaí had to be called because he allegedly refused exit to customers and was abusive.

He refuted he had called a female customer a "pig" on October 24th 2008 but there had been "a few words spoken". He had called the Gardaí that day.

On December 8th 2009 he was called to a meeting with the Managing Director and had no knowledge what it was about. It was the first time the tickets were put to him. He said he knew nothing about it and was told takings were up when he was on leave and down when

he was working. He denied it and spotted an envelope with his name on it. The Managing Director informed him of the “stings” and was told his balancing of the takings was too good. He again denied it and was told he was being let go on that basis. He got his P45 and did not leave any keys on the table but did shake their hands and said he was sorry for letting them down. He felt he had been treated very shabbily and had no idea he was to be let go that day. Outside the Manager drove up and offered him a lift to his apartment where he got the keys and handed them over. He went to the car park and collected his belongings. He went straight to the Department of Social Protection and signed on for benefit.

On cross-examination he stated never received any warnings and had not seen the three written warnings until the day of the hearing. He was aware other staff had received warnings in the past. He said the Managing Director had accused him on December 8th of fraudulently altering documents but he had replied no. He never mentioned anything about greed or about working with the other lads. The meeting was over in two minutes. He stated he was not irate or angry at the meeting. He went to his solicitor after Christmas for advice. He gave evidence of loss.

Determination:

Having heard all the evidence adduced and submissions made, the Tribunal finds that the claimant was dismissed and that it was an unfair dismissal, as the respondent did not follow proper and fair procedures.

Accordingly the Tribunal awards the sum of € 7,000.00 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established the Tribunal awards the sum of € 367.20, this being one weeks gross pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Organisation of Working Time Act, 1997 was dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)