

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
EMPLOYEE

CASE NO.  
UD1480/2009

against

EMPLOYER  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Ms M. Sweeney  
Ms. P. Doyle

heard this claim at Clonakilty on 20th July 2010

#### **Representation:**

Claimant : Wolfe & Company, Solicitors, Market Street, Skibbereen, Co Cork

Respondent : Ms Jemma Carty, Hr & Business Solutions, Causeway, Tralee, Co Kerry

The determination of the Tribunal was as follows:

This matter came before the Tribunal by way of a claim for unfair dismissal on the 20<sup>th</sup> of July 2010.

The fact of dismissal was not in issue and evidence was given on behalf of the Respondent by its General Manager. He described how he was employed in November by the current owners of the hotel who were undertaking a 2 million euro redevelopment of same.

When he arrived there and there were two Assistant Managers, one of whom was the Claimant. He said that he relied heavily on his two assistants. He had perceived performance difficulties with the Claimant from an early time and had a number of informal chats with her with regard to how she might improve her performance. However, persistent difficulties culminated in a disciplinary meeting on the 24<sup>th</sup> of February 2009. Arising out of that meeting a “notification of verbal warning” was given to the Claimant which inter alia stated:

“the points that were discussed are as follows:

- *Cash handling*

- *Management ability*
- *Cost management*

*The correct action required will be as follows:*

- *Ensure that all cash is correctly counted and securely stored*
- *Become more involved in maintaining standards*
- *Turning off lights and appliances*

*I trust that these incidences will not occur so that further disruption to the running of the West Cork Hotel is avoided. I trust you understand fully the seriousness of this current situation and that any further misconduct could result in further disciplinary action during the review period”.*

In or around the 8<sup>th</sup> of April 2009 the General Manager described how he discovered a sixteen year old girl who was on work experience in the Hotel carrying out a maintenance audit. She had been instructed to do this audit by the Claimant and the Claimant had not realised that she was in fact a school girl on work experience and not a trainee receptionist which the Claimant thought she was. He also found that coffee cups had not been cleared from the front lounge and that an extension cord giving power to security cameras in the ballroom had been removed. He again met with the Claimant and on this occasion gave her a letter headed “Notification of Written Warning” in which inter alia he stated:

*“The Duty Manager’s position within the Company is one of seniority and as such carries a level of responsibility to deliver acceptable examples of behaviour to other staff members and to follow out Company procedures correctly and in a responsible manner. Your level of commitment to your employment should clearly reflect these standards”.*

On Monday the 4<sup>th</sup> of May the General Manager came to work to find the reception area unattended. He discovered the Claimant, who was due to manage reception, was busy in the office. The night audit was not complete, the Claimant had not “cashed up” the previous night as was her responsibility. The effect of this was that the audit which normally takes 30 minutes in the morning was not complete and the reception was unmanned for an hour and a half. He further discovered that there was an error in the computation of the cash takings because of the Claimant’s failure to deduct the float.

He had a meeting with the Claimant later the same day. He suspended her with pay and instructed her to attend a further meeting on the 8<sup>th</sup> of May.

At the meeting of the 8<sup>th</sup> of May the Claimant attended with her Solicitor but her Solicitor was refused access to the meeting. The Claimant was dismissed at this meeting.

She was not advised that there was an appeals procedure that she could follow.

The General Manager described how he felt that the Claimant had always done her best but unfortunately her best was not good enough for the position which she held.

He felt that she held a supervisory role but did not have the competence to carry it out. It was for this reason only that he terminated her employment.

The Claimant gave evidence of how she commenced work in the Hotel in 2007. She had no difficulty with the former owners or management and she initially got on well with the new General Manager after the sale of the Hotel.

She remembers the events of the 6<sup>th</sup> of February 2009 and of April 2009 and essentially characterised them as being trivial matters. She said that after the meeting of the 8<sup>th</sup> of April she requested a further meeting but no further meeting occurred. She did not take any grave issue with the evidence given by the General Manager in relation to any of the other matters. She accepted that there had been some shortcomings in her work but felt that many of the issues that were raised by the General Manager were “nit picking” and she stated that she had done her best and accepted that she was “not flawless”.

An issue then arose with regard to the fact that the Claimant had previously brought a claim to the Rights Commissioner because the Respondents had not furnished her with a Contract of Employment and she had been awarded a sum of money in respect of this breach. She felt that the reason for her dismissal was the fact that payment of the damages awarded by the Rights Commissioner had arisen in February.

She acknowledged that the General Manager was not in situ at the time that she brought her claim in respect of the Contract.

She also described how she was surprised to discover that her colleagues, namely the other Assistant Manager and the Head Receptionist had acquired uniforms and that she had never been consulted about a uniform. This happened in or around April 2009. As she was of equal status with these two individuals she felt that this was a clear indication that the Hotel did not intend to continue her employment.

The General Manager’s explanation for this was that he was getting the other two staff members to test the quality of the uniform.

## **Determination**

Having considered the evidence the Tribunal finds as follows:

1. The Respondents were justified in reaching the conclusion that they reached with regard to the Claimant’s capacity to do the job she was employed to do.
2. Having arrived at this conclusion they did give the Claimant a reasonable opportunity to improve her performance.
3. The procedure however adopted by the Respondents in dismissing the Claimant was flawed, in that they prevented her legal representative attending the meeting which ultimately led to her dismissal. It is difficult to say what representations might have been made by her Solicitor, however it is possible that a middle ground might have been achieved such as demotion or re-deployment, which might have left the Claimant in a better position than she was ultimately left in. In addition to the foregoing

the Respondent failed to advise the Claimant of her right to appeal and consequently the Claimant did not pursue such an appeal. Again such an appeal may have lead to some resolution of the matter.

Because of the Respondent's procedural failure the Tribunal finds that the Claimant was unfairly dismissed but having regard to the findings set out in paragraph (1) and (2) above it feels that the appropriate remedy in this case is compensation and the measure of compensation should be €3000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

