

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

-claimant

CASE NO.
UD1717/2009
MN1659/2009
WT711/2009

Against

EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L

Members: Ms M. Sweeney
Mr. J. Flavin

heard this claim at Killarney on 17th June 2010

Representation:

Claimant: Mr. Dan O'Connor, Terence F Casey & Co, Solicitors, 99 College Street, Killarney,
Co Kerry

Respondent In Person

The determination of the Tribunal was as follows:

Summary of the Evidence

The respondent's General Manager (GM) gave evidence on behalf of the respondent. The claimant commenced employment as a night porter with the respondent in its 116-bedroom hotel on 18th July 2007. The Employee Handbook was given to the claimant to read, sign and return it. He was also given a "Statement of Main Terms of Employment". The claimant was issued with a night porter's list each night containing the room numbers and the names of the guests booked into each particular room.

In April 2008 the claimant let a guest into a bedroom without following the stipulated procedure of checking the guest's name against the night porter's list. The guest realised that it was not his room. The claimant denied this incident.

In the early hours of a morning in September 2008, the claimant again let people into a room, without checking the night porter's list. The guests who had been booked into the room were in it at the time and were upset by the intrusion. The respondent takes a serious view of such incidents. GM went through the relevant procedures with the claimant, reiterated the importance of following the correct procedure and warned him that a further breach of the correct procedure would result in dismissal. The claimant could not recall getting a warning after this incident.

In February 2009 the claimant let an intoxicated man into a room, without checking the night porter's list, and waking the family occupying it. The guests subsequently complained and refused to pay for the room. It was the claimant's evidence that this incident occurred while he was collecting room service breakfast cards from the bedroom doors. The man was desperate to get to his bathroom because he had soiled himself. Because of the emergency of the situation the claimant did not check the night porter's list before opening the bedroom door. When he opened the door he immediately discovered there were people asleep in the room. The claimant apologised and left the room. According to the claimant he reported the incident to reception at 7.00am when his shift ended. GM disputed this.

GM invited the claimant to meet him "for a chat" on 23 February 2009 at which the duty manager was also in attendance. The claimant was not given prior notice that it was to be a disciplinary meeting. GM informed the claimant of the seriousness of the incident and promised to revert to him the following day. Having considered the incidents, GM decided that the claimant was not able for the responsibility of the job and as the respondent could not risk another incident he had no choice but to terminate the claimant's employment immediately. GM was adamant that there had been three incidents and not two as contended by the claimant. GM's position was that he had only documented the second and third incidents as he was being lenient on the first occasion.

GM maintained that the claimant's behaviour merited summary dismissal in that it constituted a serious breach of health and safety as stipulated in the respondent's rules on major misconduct. They met again the next day and the claimant was dismissed. He was not informed that he could appeal the decision. The claimant does not believe he put the lives of the guests in danger.

The claimant asked if any other position with less responsibility was available at the time. GM promised that he would consider his application for any such jobs in the future. The claimant's representative contacted GM and they met in May to discuss possible alternative jobs for the claimant. They discussed the possibility of washer up or kitchen porter but it came to light that the claimant's work permit was about to expire and could not be renewed for such positions.

The claimant had a work permit at stamp 3 and as a result he is not entitled to Social Welfare payments. The claimant was unavailable to work for the year following his dismissal due to serious illness. The claimant accepts that he on each occasion he should have checked the night porter's list before opening the door.

Determination

The respondent failed to follow fair procedures in failing to give the claimant prior notice that the meeting of 23 February 2009 was to be a disciplinary meeting.

The Tribunal notes that while the claimant had been given the Employee Handbook to read at the

commencement of his employment this had been returned to the respondent at that time. The claimant had not been furnished with a copy of the disciplinary rules and procedures prior to the disciplinary meeting. He was not informed that he was entitled to be accompanied at the meeting or that he had a right to appeal his dismissal as provided for in handbook. For these reasons the Tribunal finds that the dismissal was procedurally unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the Tribunal awards the claimant €7,200.00.

The Tribunal awards the claimant €450.00, being one weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claim under the Organisation of Working Time Act was withdrawn.

The appeal under the Redundancy Acts was not pursued as the claimant did not have two years' continuous service in the employment. Accordingly, that appeal is also dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)