

EMPLOYMENT APPEALS TRIBUNAL

Claims Of:
EMPLOYEE –**Claimant**

Case No.
UD1077/2009
MN1087/2009
WT481/2009

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. W. O’Carroll
Ms. S. Kelly

heard this appeal at Limerick on 27th May 2010

Representation:

Appellant: Mr. St. John Dundon, Dundon Callanan, Solicitors, 17 The Crescent,
Limerick

Respondent: Mr. Donal O’ Rourke B.L. instructed by Ms. Gill Woods, Arthur Cox,
Solicitors, Earlsfort Centre, Earlsfort Terrace, Dublin 2.

The decision of the Tribunal was as follows:

The claimant worked as a night porter in a hotel. He was employed from 2005 to the 29th April 2009, when he was summarily dismissed for gross misconduct. The hotel had entered into receivership in October 2008. At this time there was a reduction in staff numbers and Mr. M a witness for the respondent, outlined to the Tribunal that he had been employed as Group Operations Manager but his position was made redundant. However, the receiver retained him as an independent adviser. Mr. M gave evidence on behalf of the respondent. He outlined that the claimant’s role as night porter entailed duties such as responsibility for health and safety, security of the premises, cash taken during his shift and the provision of a number of guest services including wake up calls.

The Front Office Manager received an email from a guest who had stayed in the hotel on the night of the 24th/25th April 2009. The guest complained that he had requested a 5am wake up call as he was getting a flight from Shannon airport. The guest did not receive the wake up call but woke up

shortly after 5am. When he was leaving the hotel at 5.30am he observed the night porter asleep. The Front Office Manager brought the complaint to the attention of Mr. M on the 29th April 2009 and he in turn brought it to the attention of the General Manager on the same date.

The General Manager informed Mr. M that the claimant had been the night porter on duty. It was agreed the General Manager would investigate the matter. The General Manager was not present to give evidence to the Tribunal. A report of the investigation dated the 28th May 2009, was opened to the Tribunal.

The report stated that he had telephoned the claimant to attend a meeting at the hotel on the 29th April 2009. At this meeting he presented the email complaint to the claimant. The report stated that the claimant had admitted that he could have been asleep. After the claimant admitted the charges the General Manager summarily dismissed the claimant from his position. A letter of dismissal dated the 29th April 2009 was provided to the claimant.

Mr. M informed the Tribunal that a copy of the staff handbook is provided to employees at the commencement of their employment. He confirmed that to the best of his knowledge there were no prior incidents with the claimant during the four years of his employment. Mr. M stated that the claimant could have appealed the decision to dismiss him and that probably he would have been the person to hear the appeal. However, the claimant did not lodge an appeal. The existing staff within the hotel covered the claimant's duties after his employment was terminated.

It was the claimant's evidence that he was not provided with a contract of employment or a copy of the staff handbook. On the 29th April 2009 the General Manager telephoned the claimant and asked to meet him at the hotel. The claimant was not informed prior to the meeting that it was a disciplinary meeting. When the claimant attended the meeting the General Manager had the letter of dismissal in front of him on the desk. The claimant was not shown a copy of the email with the details of the complaint made against him. When the General Manager put the incident to the claimant, the claimant told the General Manager that he had not been sleeping on duty. The General Manager wanted the claimant to sign his agreement to the contents of the letter but the claimant was unhappy to do so. It was agreed between them that the claimant would sign that he had received the letter. The General Manager summarily dismissed the claimant from his position. The claimant was not advised of the appeals procedure and he did not know to whom he could have appealed the decision as throughout his employment he had reported to the General Manager. The claimant gave evidence pertaining to loss.

Determination:

The burden of proof under the unfair dismissals legislation rests with the respondent as set out by S.6 (1) -

“Subject to the provisions of this section, the dismissal of an employee shall be deemed, for the purposes of this Act, to be an unfair dismissal unless, having regard to all the circumstances, there were substantial grounds justifying the dismissal.”

The Tribunal finds in the circumstances of this case that there was a complete absence of procedures, which jeopardised the investigation into the alleged conduct. The decision, which resulted, could not be sustained by any measure of objective analysis. The Tribunal finds that the dismissal of the claimant was unfair and awards him the sum of €25,000.00 under

the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal finds that the claimant is entitled to two weeks notice and awards him the sum of €637.20 under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The Tribunal's jurisdiction under the Organisation of Working Time Act, 1997 relates to holiday pay and public holiday entitlements. No evidence was adduced in this regard. Accordingly, the claim under this Act must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)