

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD1683/2009

against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Madden BL

Members: Mr. J. Flanagan
Mr. J. Jordan

heard this claim in Dublin on 30 November 2010

Representation:

Claimant(s):
Mr. Paul O'Reilly, Northside Centre For The Unemployed,
The Glin Centre, Glin Road, Coolock, Dublin 17

Respondent(s):
No attendance or representation

The determination of the Tribunal was as follows:-

The Tribunal adjourned the first hearing after the respondent had been sent a hearing notice to a business address. The respondent was then sent a hearing notice to its registered address for the second hearing. The claimant's representative stated at the second hearing that the respondent had been served with notification at the right address. Satisfied that the respondent had been served with hearing notification at two addresses, the Tribunal proceeded with the hearing.

Claimant's Case

Giving sworn testimony, the claimant, a chef, stated that she had commenced her employment in 2005. She had first worked in one establishment (MRK) and had in 2006 gone to work in another

(ODS). She had first met SMcC (a manager) in MRK. She was asked to work in another venue (SBN) in October 2008. She went there on a transfer. She told the Tribunal that €750.00 gross had been her basic weekly salary.

SMcC was absent a lot. JB came in as owner. He and his secretary (FX) ordered in large amounts of food and drink. the claimant put her heart into the place. She slept there at weekends and got put into a hotel.

In January 2009 a waitress (HX) was given the title of manager when SMcC was not there. On 15 February 2009 a customer made a complaint related to mayonnaise on a burger. This led to what the claimant believed to be a very minor argument but HX started shouting (in front of JX, a staff member,) that the claimant was a problem.

Asked at the hearing if there had been difficulty with HX, the claimant replied that there had been a few problems but that HX had not been the claimant's boss. However, SMcC just refused to speak to the claimant about the argument with HX.

A new chef came to work in SBN which the claimant knew nothing about even though it was her job to train new chefs. She felt undermined. She had no contact with SMcC. She was in contact with the respondent's VX who had had problems with SMcC not turning up. the claimant was stressed and exhausted. She went to a doctor who prescribed anti-biotics. The doctor told her to take time off. She could not contact SMcC.

On 18 February 2009 a medical certificate was left in to the respondent. the claimant was off for a week on this certificate. SMcC was abusive to the claimant on the phone regarding the certificate and wanted a meeting about the incident. Fellow staff were on to the claimant and told her that menus had been changed. the claimant thought that the respondent was putting plans in place.

The claimant went in and waited two hours for a meeting. She was subsequently handed something saying that she was aggressive. When a meeting ultimately took place the claimant asked for an independent witness and recorded the conversation. It was just the claimant, SMcC and HX. HX left and SMcC dismissed the claimant saying that the situation could not be resolved. There were interruptions for deliveries.

SMcC did not give the claimant a reason for her dismissal. He just said that the situation could not be resolved. She asked for a letter of dismissal. She was "under a doctor's note". She felt that she "was just a piece of rubbish to" the respondent. The abovementioned VX of the respondent texted the claimant that she was in Cork. the claimant had asked for an independent witness and had been told that she did not need one.

The claimant told VX that she would get advice. The new chef was from another restaurant. He was a complete outsider. In the days after the doctor's certificate was handed in the respondent arranged to get someone in. Six months after her dismissal the claimant still had suppliers calling her. The respondent had been a good employer until a lady (EW) had left. JB (the abovementioned owner) had been very happy. It was only when the claimant had broached the subject of overtime hours that there had been a change but when she raised the subject of her hours with SMcC and JB she got a pay rise. She kept her own private diary of her hours.

The claimant received her P45 on 13 March 2009. She got a payslip and a cheque the week after she was dismissed.

Asked at the hearing if all had gone fine until HX had come, the claimant replied that it had been HX and SMcC. the claimant had started to work with HX in October 2008. Asked how she and HX had got on, she replied that they had got on fine when HX had been in good form but that HX had been “a nightmare when in bad form” and had been very confrontational. HX had been a waitress but became a manager when SMcC was not there. SMcC and JB had “ventured” the SBN premises together but SMcC would not turn up for meetings. The claimant had got on fine with SMcC who had approached her in her previous workplace (ODS). She received no contract or procedures.

The claimant told the Tribunal that she was still out of work but that she had researched on the internet and had applied for a lot of jobs. She said that her dismissal had affected her very badly and that she had been put on a course of anti-depressants after her experience with the respondent which was a big company. She stated that she had had no discipline issue or verbal warning and that she had references from two other restaurants owned by the respondent.

Regarding the date of her dismissal, the claimant said that SMcC had turned up late on 25 February 2009 (after the claimant had waited two hours) and had dismissed her on 26 February 2009. She had been off work from 18 to 25 February 2009. On 25 February SMcC had turned up alone and said that he did not know where VX and HX were. They rearranged for 26 February. On 26 February HX and SMcC were there at the meeting. They handed the claimant letters. HX left. It was the claimant and SMcC for thirty or forty minutes. SMcC kept saying that the matter could not be resolved. The claimant asked him if he was firing her. He said yes. The claimant had been with the respondent since 2005. She had had no disciplinary issues.

Questioned by the Tribunal, the claimant said that SMcC had said that he had no problem if the claimant recorded the meeting. Her view was that “he did not care” and that “he had made his mind up”.

When the Tribunal asked if anything had been said on behalf of the respondent to the Labour Relations Commission, the claimant’s representative replied that JB had said that the claimant did not work for the company but the claimant’s representative told the Tribunal that the claimant’s pay documentation stated the respondent to have been her employer.

Respondent’s Case

There was no attendance at either Tribunal hearing by or on behalf of the respondent to contest the claimant’s unfair dismissal claim or even to dispute that her gross weekly pay had been €750.00.

Determination:

On the uncontested evidence of the claimant, the Tribunal is satisfied that the claimant was unfairly dismissed. On the claimant’s evidence she was treated unfairly. There appears to have been

o objection to the claimant's recording the dismissal meeting so that she could verify all that she said. There appears to have been a personality clash between the claimant and HX. The respondent could have attended one of the Tribunal hearings. The claimant's pay documentation indicated that the claimant was employed by the respondent. The Tribunal did all it could to notify the respondent and the Tribunal is satisfied that the respondent was on notice of the case.

Allowing this uncontested claim under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal deems it just and equitable in all the circumstances of the case to award the claimant compensation in the amount of €50,000.00 (fifty thousand euro) under the said legislation. (This award is equivalent to 66.67 weeks' pay calculated on the basis of a gross weekly pay for the claimant's employment with the respondent of €750.00.)

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)