

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO:

EMPLOYEE

UD 1907/2009

- claimant

against

EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Hennessy
Ms. S. Kelly

heard this appeal in Clonmel on 14 December 2010

Representation:

Appellant: Eamon Hayes, Solicitors, 50, New Street, Carrick-On-Suir,
Co. Tipperary

Respondent: Peter T. Reilly, James Reilly & Son, Solicitors,
4, Brighton Place, Clonmel, Co. Tipperary

The decision of the Tribunal was as follows:

Respondent's Case:

The owner of the business gave evidence. The business consisted of a takeaway and adjoining restaurant. The claimant had been employed as an assistant on a part-time basis and as when required. She also worked part-time in a hairdressing salon. The respondent on a full-time basis also employs her mother.

Employees were issued with a uniform of trousers, polo shirt, a waistcoat and a half apron. The claimant was issued with all bar the waistcoat as the respondent stated he could only get one for her if it was especially made, as he "could not get one big enough". He told the Tribunal that the claimant sometimes wore inappropriate "skimpy" tops and his partner spoke to her about the matter.

He stated that the claimant had a fiery temper and could snap at customers or throw their cutlery on the table. Customers complained to him of her attitude and he said he spoke to her on a number of

occasions. He had no written notes of these warnings and he had not given her a written warning.

On July 27th 2009 2 customers came into the restaurant to speak to him. They told him the previous evening they had tried to gain entry into the takeaway at around 12.45 am. The claimant pushed the door and made a rude hand gesture when they tried to gain entry. He said that he, the claimant and the 2 customers sat down to discuss the matter. When he spoke to her about it, she said nothing and just shrugged her shoulders.

A half hour later another incident occurred. A regular customer came in to order some food. She took her order and left but shortly returned telling the claimant that her food was cold. The customer came to him and gave him the bag of food telling him it was cold. The witness said that it just was not good enough. He again spoke to the claimant saying it was not good enough to give customers cold chips and she gave no reply, just shrugged her shoulders. He asked her when her last day of that weeks shift was, she replied Thursday. He told her she would finish up then. She replied that she would prefer to finish then and there, got her coat and left. She was sent all monies owed to her.

On cross-examination he stated that food in his premises was not pre-cooked but there were warming cabinets to keep food warm for a few minutes. When asked did he know the lady that was refused service he replied that he did not. When put to him was he aware this person had assaulted a member of his staff off the premises, he replied that he did not. He was also unaware that other staff did not want to serve food to this person.

He stated that he had not been present during the alleged incident of the claimant giving a rude hand gesture to a customer. When asked, he stated that he was not aware of the name of the customers who had made the complaints against the claimant. The claimant had not been given a contract of employment. He said that he had not asked the claimant to go and apologise to the customers concerned.

When asked by the Tribunal he stated that 3 other staff had been present on the night the claimant refused entry to 2 customers and he had spoken to them concerning the matter. He said that when he had spoken to the 3 other staff he had come to a conclusion about the matter.

On redirection he stated that there had been a duration of a half hour between the complaint of the 2 customers refusal of entry and the complaint of the cold food.

Claimant's Case:

The claimant gave evidence. She explained her role in the respondent's business. She explained that she had received a uniform but not a waistcoat and was told it was because the respondent's logo was being put on it. She had never worn "skimpy" tops and explained that it would have been too dangerous considering the environment with hot cooking oils.

The claimant had been working on 27th July 2009 on a shift from 5 pm to 11 pm. She said that she had not closed up the previous evening. 2 customers entered the takeaway that evening and came to the counter. The claimant recognised 1 of them as the person that had assaulted her colleague. She had been told by a senior member of staff not to serve this person if she came in for food. They came to the counter, the claimant told her she would not serve her. The customers would not leave. She asked her colleague to call the respondent who was on the premises to ask her to leave. However when he arrived they had left. He told her that she should serve this person.

Later that evening a regular customer placed an order. She took her order and soon returned stating

it was cold. The claimant stated that she was about to replace the order but the respondent told her some one else would do it.

She gave evidence of loss stating she had not retained further employment.

On cross-examination she stated that she had not had a good relationship with the respondent. He had never mentioned her attitude in the past. She agreed she had refused to serve a certain customer who had assaulted one of her colleagues some weeks previously outside the respondents business on request of a senior colleague. She stated she had not refused entry to any customers.

She stated that she had apologised to the regular customer for the cold food and had offered a replacement. When questioned on her mitigation of her losses and various entries on facebook were put to her she replied that she had not been paid for the hairdressing jobs she had done. She had only done it to keep up her experience and had done them as a favour.

She stated that there had been no meeting between the respondent and the 2 customers allegedly refused entry to the takeaway.

When asked about her mitigation of her losses she stated that she had only submitted her curriculum vitae for hairdressing positions.

Determination:

Having heard all parties in this case the Tribunal finds that that there is a conflict in evidence submitted of the events by both parties. The Tribunal are mindful that there were no formal procedures in place by the respondent in dealing with complaints made towards the claimant in this case. The claimant had no written contract of employment.

However, the Tribunal finds that the claimant had not offered enough sufficient evidence to mitigate her losses. In this case, the Tribunal finds that the claimant was dismissed and the procedures had been unfair.

In the circumstances finds in favour of the claimant and awards her the sum of € 450.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

