

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD222/2010

Against
EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin
Members: Ms. M. Sweeney
Mr. J. Flavin

heard this claim at Cork on 13th October 2010 and 17th January 2011 and 18th January 2011

Representation:

Claimant:

John L Keane & Son, Solicitors, Youghal, Co Cork

Respondent:

Mr. Ambrose Downey, IR/HR Executive, IBEC, Gardner House,
Bank Place, Charlotte Quay, Limerick

The determination of the Tribunal was as follows:-

Respondent's case

The respondent agreed that the claimant commenced employment with the business on 17th March 2007 and that she was dismissed due to gross misconduct on 13th August 2009. It was also agreed between the parties that the claimant's gross pay at the time of dismissal was €346.00 per week.

The event that led to the dismissal of the claimant was an incident that occurred on 5th August 2009. According to witnesses for the respondent the claimant was aggressive and rude to a restaurant customer and her family. The customers had moved to a different table after their order was taken and this meant that the claimant had to point them out to the person serving the food when he could not find them. None of the witnesses heard the conversation that took place between the claimant and the customers. However the customer made a complaint to the Duty Manager and the Duty Manager told the Tribunal that the customer was very upset. The Duty Manager could not recall exactly what the claimant allegedly said to the customer.

On foot of this complaint the claimant was called to a disciplinary meeting on 13th August 2009. Present at this meeting was the Duty Manager and the claimant. The Duty Manager informed the claimant that the General Manager had decided to dismiss the claimant. The general Manager referred to the employee handbook, which was given to the claimant when she

commenced employment, and stated that it is clear in this that an employee has the right to appeal. However he could not say whether the claimant was told about her right to appeal during the disciplinary process. Furthermore the General Manager felt that the claimant's actions constituted gross misconduct as defined in the handbook as it was deliberate and detrimental to the business of the hotel.

Claimant's case

The claimant stated that on 5th August 2009 she took an order for food from a customer and her family and seated them at a table. However when the food was brought out the customers had moved to a different table. This table had not been cleaned and the claimant told the customer that she should have asked before moving to another table. Later the customer approached the claimant and said that she was not happy with the claimant's tone of voice. The claimant apologised to the customer for any upset caused and again requested that in future she let staff know if she wished to change tables. The customer replied that there would not be a next time and left. The claimant was adamant that she had not been rude or aggressive to the customer.

At the end of the shift on 5th August 2009 the claimant was requested to call to the hotel the next day but the claimant was not due in on that day and came in on 7th August instead. However at that stage the Duty Manager told her that it would be best if she did not come back to work until after the customer who had complained had checked out. However she was subsequently told to call to the hotel on 13th August 2009 and when she did so she met with the Duty Manager and was shown an e-mail from the General Manager stating that she was dismissed.

The Duty Manager did not inform the claimant of her right to appeal and the claimant told the Tribunal that she was not aware of such a right. However the claimant did ask the Duty Manager to see if he could do anything to persuade the General Manager to change his mind and he agreed to talk to him. Subsequently the claimant phoned the Duty Manager while he was at home and he told her that nothing could be done and that she was finished.

Determination

The Tribunal had previously decided upon the evidence adduced that the proper respondent is the respondent named above.

Having carefully considered the evidence adduced the Tribunal finds that there was insufficient evidence to establish a fair dismissal. It was not established that the issue was one of gross misconduct. The Tribunal also finds that the procedures adopted were deficient and accordingly finds against the respondent. The Tribunal awards the claimant €7,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

