

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE – *claimant*

CASE NO.  
UD2337/2009

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms J McGovern BL

Members: Mr N Ormond  
Ms N Greene

heard this claim at Dublin on 3rd February 2011

Representation:

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Claimant(s): Ms Nicola Andrews BL, instructed by:  
Mr Paul McNally  
Solicitor  
2 Windmill Road, Crumlin, Dublin 12

Respondent(s): Mr Jason Kelly  
John B O'Connor & Co  
Solicitors  
37 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:

As the dismissal was in dispute the claimant gave evidence first.

**Claimant's Case:**

The claimant gave evidence that she worked as a part-time barperson on and off for ten years at the same establishment. Her employment was continuous from when the respondent company took over the business, a hotel with nightclub, in 2007. There were four bars in the nightclub where the claimant worked. The claimant normally worked in an upstairs bar and often on her own. She

never had any issues with her till being wrong and no one ever brought anything to her attention. The uniform was dark jeans, trainers and a black t-shirt. She normally worked two or three nights per week on Thursday, Saturday or Sunday. She never worked on Fridays.

On Thursday August 27<sup>th</sup> 2009 all staff members were called to a meeting. The club manageress told the staff that there was a problem with the tills being wrong and so they were going to move some staff members to different areas to see if it would change anything. She did not mention anything about the uniform.

After the meeting the claimant was moved from the upstairs bar to a much busier bar downstairs. Five different people had access to the till she was working from. She felt uncomfortable and at the end of the night asked the manageress why she had been moved. The manageress told her to speak to the general manager, but he wasn't there at the time.

The claimant contended that on the same evening while talking to the manageress and another employee she had asked for the following weekend off. There was no official system of applying for time off.

When the claimant arrived for work on Saturday August 29<sup>th</sup> 2009 she went to the office to collect her wages. The general manager's wife was abrupt in her manner towards the claimant and said she would send the claimant's wages out to her. The club manageress then approached the claimant and told her to change her clothes. The manageress said a memo had been sent around a few months previously in regard to the staff dress code. The claimant was sent home to change into a pair of black trousers. The claimant was very upset. She went home and sent a text message to the manageress stating that she believed something else was going on and that she was being bullied. She stated that she wasn't going to return that night and that she didn't have a pair of black trousers at home.

The following Monday the claimant received a text message from the manageress stating that her nights that week were Friday and Saturday. She had never received a text message informing her of shifts previously and she didn't normally work on Fridays. The claimant replied that she never worked on Fridays and that she was away that weekend. The manageress replied that she had spoken to the general manager and that if she didn't turn up her services were no longer required. She decided not to respond as the manageress was being instructed by the general manager and she didn't have his phone number. The claimant was very stressed as she had been made redundant from her fulltime job.

The claimant sent an email to the person above the general manager, the hotel manager, stating that she had a grievance as she was being bullied and believed that she was being constructively dismissed. He couldn't open her first email so she sent it again. Then she was ignored. She became ill with a throat infection and sent a cert to work covering the following two weekends.

On September 14<sup>th</sup> 2009 the claimant went to work to check the roster. There were no hours beside her name. She asked the manageress why and she said because the claimant had not contacted them to say she was better so the general manager had not put her on the roster. She organised to meet with the hotel manager on September 17<sup>th</sup> 2009.

At this meeting the hotel manager said that it was a storm in a teacup and he suggested a further meeting with all involved, but the claimant didn't want to. He was nice at first but as the meeting went on she found him intimidating. He said she was just looking for money. The claimant left

and a few weeks later sought her P45 as she could not return to work in that environment.

The claimant gave evidence of her loss.

During cross-examination the claimant agreed that when she was moved to the bar downstairs another staff member had been moved to the bar upstairs. If the difficulty was with the other staff member the manageress should have told her. She did not speak to the general manager about it. She had not booked her holiday prior to becoming sick. Her boyfriend booked the holiday on Saturday September 5<sup>th</sup> 2009 and they went on Sunday 6<sup>th</sup> 2009. They returned on Friday September 11<sup>th</sup> 2009. She was not aware of having to notify her employer of her intended return to work date.

She finished the meeting with the hotel manager by saying that she would think about having a meeting with the three managers, but she didn't contact him again.

### **Respondent's Case:**

The club manageress gave evidence that the general manager had started in July 2009 and there were a few things he wanted to address. Accordingly, she had called a staff meeting on August 27<sup>th</sup> 2009. She told the staff that there was a problem with tills being up or down cash and so they were going to move people and that shifts would be changing. She moved the claimant from her bar as there were never any problems with her till.

The witness was unaware of the claimant's holiday plans until she received her text message on Monday August 31<sup>st</sup> 2009. She prepared the roster on Saturday. If she had known that the claimant was unavailable she would not have put her on the roster.

She sent the claimant home on Saturday August 29<sup>th</sup> 2009 as she was wearing dark blue trousers and white shoes. The general manager wanted all the staff to wear black shoes and trousers. She did not mention the uniform to the staff at the meeting and she didn't say it to the claimant that evening as she didn't want the claimant to think she was picking on her. When the general manager's wife, who worked one night per week, saw the claimant in the office on Saturday night she told the witness to tell the claimant to go home and change. She got the claimant's text after midnight when she left the club. She didn't receive all of the text the claimant contended she sent.

The witness spoke to the general manager on Sunday and he instructed her to send the claimant the details of her shifts the following week. She forwarded the claimant's response to the general manager and he instructed her to tell the claimant that if she didn't attend for work her services were no longer required. The claimant was due to work on Friday September 4<sup>th</sup> and Saturday September 5<sup>th</sup> 2009. She received a text message from the claimant on Saturday 5<sup>th</sup> 2009 stating that she was on a cert and that she was unavailable that weekend and the following weekend.

When booking holidays staff normally informed her that they had booked a holiday and requested the time off. The general manager had told her that she was too lenient with staff and so she thought that perhaps the claimant was taking advantage of her, so she contacted the general manager for advice.

During cross-examination the witness stated that the new general manager had a strong personality

but she agreed with him that changes had to be made. She had no back up previously. She didn't advise the claimant that she could wear the correct uniform on her next shift, instead of going home and changing, as the claimant had ignored her on Thursday night and then 'had a go' at her at the end of the night.

In regard to moving the claimant, the other employee was the one under suspicion, but she agreed that it was reasonable for the claimant to think she was under suspicion.

**Determination:**

Having considered the evidence carefully the Tribunal does not consider that this was a case of constructive dismissal. While certain changes in the workplace could have been communicated better, the claimant did not attempt to contact the general manager to clarify matters. While the claimant's grievance was well documented on her part there is no evidence that she made valid attempts to engage with the employer.

She gave evidence that she had a sick note to cover the weekends of the 5<sup>th</sup> and 12<sup>th</sup> September 2009. She never communicated when she would return. When she arrived on September 14<sup>th</sup> 2009 she was aggrieved that no hours were allocated to her the following week, but she did not query when she was to be put on the roster going forward. The Tribunal notes that the hotel manager's offer of a meeting to resolve issues was not availed of by the claimant.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, is dismissed.

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)