

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD485/2010

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. G. Mc Auliffe
Mr. G. Whyte

heard this claim at Dublin on 15th June 2011

Representation:

Claimant: Mr Anthony Traynor, DALI Solutions, 12 The Grove,
Bettyglen, Raheny, Dublin 5

Respondent: Mr. Justin S. Lennon, J.J. Lennon Solicitors, 16 Upper
Pemboke Street, Dublin 2

The determination of the Tribunal was as follows:-

Respondent's Case:

The respondent's Director/Chef, gave evidence.

He stated that an incident occurred where a co-director of the business told him he had reason to believe the claimant had something in her handbag that was from the stock of the premises.

A bag search took place on her way out of the premises and he acted as a witness.

Nothing was found in the handbag and a meeting with the claimant took place. She was asked to explain and was given access to a member of staff (PW) who interpreted the conversation for her. This was to make sure she understood all that was happening. The claimant left and did not show up for work the following day or for a few days after the event. She subsequently returned to work and continued in her employment for approx 3months.

At this time respondent informed her that he would have to let her go due to a downturn in business. She was employed as a cleaner and it was decided that her duties could be shared. Kitchen porters and the waiting staff would take on some cleaning duties.

Under cross examination he stated that he was aware of Labour Law and she was not dismissed on the day. She sent in a representative a few days later to ask if she was dismissed, he was told no and she returned to work the following day.

Asked how many people were let go at the time he stated that two chefs had already left and subsequently a few people left as happens in the restaurant business.

The respondent's Manager/Director in his sworn evidence stated that there was a problem in the restaurant with theft. On the day in question he noticed the claimant with her handbag in the bar area. He thought it was suspicious. Later he saw the same bag in the laundry room and it contained a bottle of vodka. He waited for the other proprietor to show up and asked if he could check her handbag. Nothing was found in the bag and they went to a room to discuss what had happened, PW was there and acted as interpreter. She was not accused of theft but asked to explain.

She was not told she had been suspended but did not show up for work. Approx three months after her return to work it was obvious that there was not enough work for everybody. Lunch time trade had dropped significantly and the business had to be protected.

Efforts were made to contact her after the date of her dismissal, he even sent her a letter because he could not reach her by phone advising her that her might have a few hours for her.

Claimants Case:

PW witness for the claimant said in his sworn evidence that he had been an employee of approx three years and had left two months ago.

He was asked to go to the office and translate for the claimant. When asked about the bottle of vodka she said she did not have one. The respondent said she was suspended until the situation was clarified. He did see the claimant on one occasion before her return to work with another person talking to the proprietor. Things were more difficult and tense when she came back to work.

The claimant did not give evidence.

Determination:

Having considered all of the evidence adduced, the Tribunal is of the view that the company dismissed the claimant because of a downturn in business and not for any vindictive reason based on the earlier incident. This was confirmed by the fact that, hours of work were offered sometime after the dismissal and the claimant acknowledged that this was the case.

Accordingly the claim under the Unfair Dismissal Acts 1997 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

