

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

- claimant

RP1750/09

UD1556/09

against

EMPLOYER

- respondent

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. A. O'Mara

Mr J. Flannery

heard this claim at Dublin on 29th November 2010 and 25th May 2011.

Representation:

Claimant: Ms Lauren Tennyson BL instructed by Byrne & Company, Solicitors, 11
Malahide Road, Swords, Co. Dublin

Respondent: Ms. Muireann McEnery, Peninsula Business Services (Ireland) Limited, Unit 3,
Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

At the outset of the hearing the claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn.

Respondent's Case:

The respondent is a food importer and nationwide distributor. It owns a supermarket in Blanchardstown where the claimant worked. A meat counter was installed in that supermarket in 2007. An advertisement was placed in local newspapers recruiting butchers with two years experience. On foot of the advertisement three butchers were hired, the claimant being one of them.

The claimant initially worked as a sales assistant as a temporary measure as there was a delay in the opening of the meat counter. He assumed his butcher duties in June 2007. He reported to the Store Manager. He was furnished with his terms and conditions of employment in April 2007. He was not provided with training as the respondent expected him as a qualified butcher to be able to carry out his duties.

The claimant had issues at work and together with his two colleagues raised these with their union representative. The union representative subsequently wrote to the Company Director MB on 29th April 2009 in relation to concerns on health and safety concerns and rest periods. MB spoke to the three individuals at the end of May 2009. He dismissed one employee immediately and told the other two he would deal with the issues later. MB was not happy that they had gone to their union representative without notifying him. He responded to the union's letter on 19th June 2009.

The claimant had complained of the lack of equipment to carry out his work. MB contended that the butcher counter had been fully kitted out and the claimant was free to purchase equipment subject to the approval of the bookkeeper. The claimant had access to the company cheque book. MB asked the claimant for a list of equipment that he needed but the claimant never furnished him with the list.

Following numerous verbal requests to the claimant requesting that he provide his qualifications, MB wrote to the claimant on 6th June 2009 seeking these. His qualifications stated that he was a cook and confectioner. MB contended that he never hired butchers without qualifications.

MB took advice and commissioned a hygiene report and was advised to set up a HACCP plan.

MB issued the claimant with numerous verbal warnings during his tenure. Health procedures were not adhered to and not enough attention was paid to stock control despite numerous reminders. On 5th June 2009 MB invited the claimant to attend a disciplinary meeting on 14th June 2009. The letter was hand delivered to the claimant by the Store Manager on the claimant's return from holidays. MB contended that the claimant knew the meeting was scheduled for 14th June 2009. The claimant did not attend the meeting. The Store Manager and MB had a discussion and took the decision to dismiss the claimant due to his lack of performance, poor hygiene and lack of qualification following the meeting on 14th June 2009. The claimant had taken extended smoking breaks and cautions and warnings issued to the claimant were based on CCTV footage. The Store Manager furnished the claimant with his letter of dismissal.

Claimant's Case:

The claimant applied for the position of security officer with the respondent and commenced employment on 28th April 2007. His supervisor, D, offered him the position of butcher approximately four months later. He handed a copy of his qualifications to D. MB never asked him for them. No training was provided, as they were happy with his work. His rate of pay increased in that role.

Several warning letters issued to him and other staff in relation to smoking breaks. He also received two caution letters, which D handed to him. D did not speak to the claimant about the content of the letters. He was never shown CCTV coverage concerning his smoking breaks. He was not informed that there could be consequences for him as a result of him taking the breaks.

In April 2009 the claimant together with two of his colleagues spoke to their trade union representative about health and safety issues in the workplace. The trade union representative subsequently raised these issues with the respondent in a letter dated 29th April 2009.

Subsequently MB approached him and his colleagues in relation to the health and safety issues they raised. MB told one employee he was fired and told the claimant that he would sort out his problems later. At that time the claimant felt he could also be dismissed.

In early June 2009 the claimant went on holidays. He returned to work on 11th June 2009. He never received a letter dated 5th June 2009 from the respondent and thus was unaware that he was invited to a disciplinary hearing on 14th June 2009. No one from the company had asked him why he did not attend the disciplinary hearing.

The claimant never received his dismissal letter from the respondent. It was while he was giving the rosters to D for the following week that she told him he was being dismissed. He was not given any reasons for his dismissal. His last day of employment was 7th July 2009.

Following the claimant's dismissal he was in receipt of social welfare payments for several months. He secured new work on 2nd February 2010 but at a lower rate of pay.

Determination:

The Tribunal is satisfied from hearing the evidence adduced by both parties over the period of a two day hearing that a conflict of evidence exists between the parties. However, the Tribunal is satisfied that no proper procedures were offered to the claimant in the process leading to his dismissal.

Accordingly, the Tribunal finds that the claimant was unfairly dismissed and awards him €17,500.00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
CHAIRMAN)