

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

UD1516/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE
and

claimant

EMPLOYER *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr J. Flanagan
Mr C. Ryan

heard this appeal at Dublin on 5th December 2011

Representation:

Appellant(s): Mr Noel Reilly, Gaffney Halligan & Company, Solicitors,
Artane Roundabout, Malahide Road, Dublin 5

Respondent(s): The MD of the respondent

The determination of the Tribunal was as follows:-

This came before the Tribunal by way of an appeal of the recommendation of the Rights Commissioner dated 11th May 2010 reference r-084761-ud-09/GC.

Claimant's Case

The claimant told the Tribunal that he worked on the deli counter of the respondent. He relayed an incident which occurred on the 4th August 2009. He was supposed to clean the hot counter and his colleague was supposed to clean the cold counter. His colleague AM told him to clean the cold counter; she was speaking to a customer for eight to nine minutes. His colleague reprimanded him for not cleaning the bowls on the cold counter. He told her she was talking to a customer for eight minutes and that she should clean her counter. His colleague AM told him she was going to call the manager. She called the manager and the manager listened to him and to AM. The manager told him that there was no need to get angry. The

store manager RB was then called. The claimant and the store manager spoke in Hindi about what happened. RB told him there was no need to shout. RB told him not to argue and he would not put him on the roster if he behaved like that. He then told the claimant that there was no more work for him. The claimant left the shop. His friends who he shared accommodation with worked in the shop and they told him that he was taken off the roster. He did not report for work the next day and he returned to the shop two days later. He told RB that he was ready to apologise. The store manager RB told him there was no job for him and to return after two months. He told RB if he was not going to do anything that he was going to go to the owner. He spoke to the owner and told her what happened, he was really angry with RB and that he had a disagreement with RB. RB was not going to hire him for two months.

The owner told him she could not make a decision as she was new. She told him that she would try to assign him to the evening roster so that he would not have to work with RB. She told him she would contact him after one to two days. He called her after two days. She told him to come to the shop and they would discuss it. He reported to her office on his own. She then called AH and the store manager RB to the office. The owner asked RB if the respondent had a job for him and he said there was no job for him. They had his holiday pay and P45 ready for him along with a letter for him to sign. He told her he would not sign the letter. He had to pay his fees for college. RB prepared the letter and he eventually signed the letter as he had no option and he was pressurised into signing it. He did not want to leave his job. He had no opportunity to seek advice. He was out of work for two months. He then obtained employment for a month, he obtained alternative employment on the 4th November 2009.

In cross-examination he stated that he told AM that she could have cleaned the hot bowls on the counter. He did not tell her he was not going to do it. He had no choice but to sign the letter and he was pressurised into doing so.

In answer to questions from the Tribunal he stated he was the same level as AM. He did not shout at RB but he spoke loudly at him. In 2009 he was good friends with RB.

Respondent's Case

AM told the Tribunal that she was in charge of the deli counter on the day of the incident. She was responsible for the shift. She had to tell the claimant what to do. She asked him to change the bowls in his counter and she asked him a third time and he yelled at her. She called the manager AH and he told her and the claimant that work had to be done. The claimant started shouting at AH and he said that AH was always against him and taking sides. AH called the store manager RB. The claimant told him that if matters were like that he did not want to work there again. AH spoke to the store manager and the claimant took his hat off and left the shop. The claimant returned to check the roster after a few days.

She spoke to the customer for no longer than ten minutes. At the start of the shift she asked the claimant to clean the bowls. She was supervisor at the time. She had been employed for five years with the respondent. She could not recall if she received extra money for working as a supervisor. Both she and the claimant were responsible for both the hot and cold counters. The deli is a small area.

The assistant manager at the time AH told the Tribunal he was called to the deli regarding an incident. He asked both the claimant and his colleague AM what happened. The claimant told him that he should listen to both sides. He told the claimant and AM that the job has to be done

and the claimant told him that he was always against him. The claimant told him he was going to leave. He called the store manager RB who spoke to the claimant in his native language which is Hindi. The claimant shouted at the store manager. The claimant told him he was not returning. After the incident he had to call a staff member to cover the claimant's shift. Thenext he heard from the claimant was on Friday. The claimant was given a letter and his holidaymoney. The claimant took his pay and left. The claimant had to be replaced.

RB the store manager compiled the letter that was given to the claimant. He was surprised at the claimant's outburst, the respondent had minor problems with the claimant but nothing major.

The MD/owner of the respondent told the Tribunal that she had taken over the shop the week prior to the incident. She was dependent on the assistant manager and the store manager. RB was in the office at the time of the incident and AH came to her office. She could hear screams and RB and AH relayed the incident to her. She had met the claimant the previous week. On the day of the incident the claimant flipped, then took off his gloves and walked out. She saw the claimant the following Friday. She had twenty five employees in the shop. When the claimant left work there was no dispute and she wished him the best. She wanted to ensure that he had received his P45 and all monies due to him.

In cross examination she stated that AH and RB dealt with the situation and she was going to go with what RB said. The claimant walked out of the shop and did not return for three days. She did not remember the claimant contacting her regarding an argument in the shop. The claimant was very aggressive when he was leaving. She did not prepare a letter for the claimant. She did not recall the claimant telling her he wanted his job back. She did not recall RB tell the claimant that he had no job for the claimant. There was no way that RB would have told the claimant that there may be a job for him in two months.

Determination

The claimant gave evidence that he was dismissed by RB and no contradictory evidence was given by the employer. The Tribunal deemed the claimant was unfairly dismissed. The Tribunal decide that compensation is the most appropriate remedy and awards the claimant compensation of €4,500.00 under the Unfair Dismissals Acts, 1977 to 2007 thus varying therecommendation of the Rights Commissioner.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

