

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE – *claimant*

UD695/2010

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Herlihy

Members: Mr. W. O'Carroll  
Mr. F. Dorgan

heard this claim in Limerick on 22<sup>nd</sup> November 2011

Representation:

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Claimant: Mr. Gerard Tobin, Limerick Citizens Information Centre, 54  
Catherine Street, Limerick

Respondent: Mr. Thomas Dowling, Hogan Dowling McNamara Solicitors,  
Castletroy House, Dublin Road, Limerick

The determination of the Tribunal was as follows:-

#### **Respondents Case:**

The General Manager (JL) gave evidence. He has worked for the respondent for the past eleven years. His role is to oversee the rosters, stock control and security. The claimant began working for the respondent in late 2008. He had worked for the respondent previously but had left to take up another job. When he returned, he was working as a part time barman working 15 – 20 hours per week. The bar manager would have given the claimant a contract of employment and explained the contents to him. The roster for staff is made the week before and staff sign off at the end of each shift.

On the 6th October 2009, he was at home at 9pm getting ready to go into the bar. He rang the bar and asked to speak to (BC) the bar manager. He was put on hold and then the claimant answered. (JL) noticed there was very little background noise and asked the claimant where he was. The claimant told (JL) that he was in the cash office. He asked the claimant how he got into the office and was told a bar was used to keep the door open. He then telephoned (BC) who told him a bar was not used to keep the door open. (BC) told him that the claimant had asked him to lie about the bar keeping the door open.

He went into the office, and called the claimant into his office. The claimant admitted to him he had lied and he told the claimant that he would deal with it the following day. When he went down to the bar (BC) told him the claimant had taken his coat and gone home.

The codes to the cash office are changed regularly and only managers know the codes. There are CCTV cameras in the office and the door was not open. The rosters were made for the following week and the claimant was on the roster. The claimant did not return to work. He did not initiate a grievance procedure and he was paid his holiday pay that was due.

Under cross-examination (JL) said only management are allowed in the cash office. He said the claimant did not phone him the following day and the claimant was not marched off the premises. He said the claimant was not rostered to work the following week as (BC) had phoned him and he said he was not coming back.

(BC) gave evidence. He was the bar manager at the time but has since moved to another employer. He was with the respondent for three and a half years as a barman before he was made bar manager. He went through the contract of employment with the claimant.

He was in the kitchen preparing food for the table quiz when the claimant came in and said (JL) had phoned. The claimant said he went into the office and asked (BC) to tell (JL) that the door was left open. (BC) said he could not and spoke to (JL) by telephone. (JL) came into the respondent and met with the claimant. The claimant then came into the bar, took his coat and said, "I'm out of here". (JL) came into the bar and he told him the claimant had left. (JL) asked him what are we going to do, we will have to get cover.

He telephoned the claimant and asked if he was coming back. The claimant told him no. He said the claimant was a good employee.

Under cross-examination he said he telephoned the claimant either the following day or the day after that. He said the claimant had called into the office two or three days later but he did not give him a contract of employment at that time. He said the door was not open and on that night the claimant had told him he had used the code.

The Financial Controller (BS) gave evidence. He would meet the claimant each week to sign his social welfare claims. The claimant averaged two days per week. (BS) said he prepares the rosters and the claimants name was on the roster for the following week. He issued the claimants P45 on the 18th October 2009 and he would have been taken off the roster then.

### **Claimants Case:**

On Tuesday 6th October 2009, he was on duty in the bar. There was a table quiz on in the bar and it was noisy. He received a phone call but was finding it hard to hear what the person was

saying. He put the person on hold and went into the office to take the call. When he picked up the phone he discovered it was (JL). (JL) asked him how he got into the office and he told him he pushed the door. (JL) told him to get out of the office.

He then went to (BC) who told him not to worry he would speak to (JL). (JL) came in and they had a discussion. When he went back to the bar two security guards told him (JL) said he was to leave and said to phone (JL) at 3pm the following day. He telephoned (JL) at 3pm the following day and (JL) told him he was sacked and hung up the phone. He said it was common for the door to be left open and he was never given an explanation for his dismissal.

Under cross-examination he said he understood his contract of employment. There was a code on the door but it could be pushed open. He was in the office getting the chains to lock up on a regular basis. He would also go into the office to get the keys for the sprits cage. The bar was left in the door to keep it open for quick access. He said a lot of the employees had the code to the cash office but he agreed he should not have had this.

### **Determination**

Having carefully considered the evidence adduced the Tribunal is of the view that the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail. In particular the Tribunal relies on the evidence of (JL) that he did not tell the claimant that he was dismissed. In supporting his evidence (BC) gave evidence he telephoned the claimant and was told by the claimant he was not coming back. (BC) gave evidence he went through the contract of employment with the claimant and was aware of the grievance procedures. The claimant under cross-examination agreed he understood the contract of employment.

The Tribunal prefers the evidence of (JL & BC) to that of the claimant and dismisses the claim. There was no unfair dismissal as the claimant voluntarily left his employment. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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