

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**Claimant**

UD1866/2010

MN1823/2010

WT832/2010

against

EMPLOYER - **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. O’Leary BL

Members: Mr D. Winston
Mr T. Brady

heard these claims at Dublin on 30 January 2012

Representation:

Claimant:

Mr Pdraig D. Lyons BL instructed by Mr Shane Healy,
Healy O’Connor Solicitors, 77 Sir John Rogerson’s Quay,
Dublin 2

Respondent:

Ms Caitriona McDonagh BL instructed by Ms Marian McGee,
Sheridan Quinn Solicitors, 29 Upper Mount Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant spent the last two years of his apprenticeship as a barman working in the respondent’s public house. After a spell away from the respondent he returned on a part-time basis in or around June 2005 and then on a full-time basis from early 2006. There was no written contract or terms and conditions supplied to the claimant but it is accepted that at all relevant times the claimant was a senior barman.

It is common case that in August 2006 the proprietor of the respondent issued a notice to all staff members highlighting the problem of stock shortages and seeking the assistance of staff members

in providing information to identify the culprits. Inter alia a regulation was introduced whereby bar staff were not permitted to have drinks on the premises either during opening hours or after work.

The respondent's position is that later in 2006 the proprietor had reason to reprimand the claimant when scanning of CCTV footage revealed the claimant to have given a bottle of beer to a customer without taking any money for it. It is further the respondent's position that when challenged about this the claimant told the proprietor that the customer had won the beer in a competition organised by another customer. The claimant's position is that this incident never occurred.

It is common case that the proprietor saw the claimant in a review of CCTV footage in October 2009 to pour himself a glass of cider whilst at work on 5 October 2009. The following day the proprietor issued the claimant with a written warning which warned of dismissal for a further breach of regulations. The claimant apologised for his actions and said it would not happen again.

The respondent's position is that following a bad stock report the proprietor when studying CCTV footage of the Saturday night Sunday morning of 12/13 June 2006 saw the claimant dispensing drinks that were not paid for in respect of the serving of multiple spirits and later freehand pouring of Baileys liqueur. It was further the respondent's position that the claimant had left his wallet next to the till in contravention of instructions to the contrary and had transferred money between his wallet and the till. The claimant had also been seen to take €50-00 from his shirt pocket and give the change to his girlfriend.

When the claimant next returned to work, by the respondent's position on Monday 14 June 2009 or by the claimant's position on Wednesday 16 June 2009 the proprietor called the claimant to his office where he was dismissed for giving drinks that were not paid for. There is a dispute between the parties as to whether the CCTV footage was shown to the claimant. Another senior barman, who is now the bar manager was called in to the meeting by the proprietor to accompany the claimant.

Determination:

No CCTV footage was available for the Tribunal to see in evidence due to the fact that the recorder only retained the footage for one month. This is at odds with the letter sent to the claimant within a week of the dismissal in which it was suggested that the footage was to be supplied to the Gardai. Given there is a considerable conflict of evidence about the circumstances of the dismissal meeting and also about the date it occurred, the lack of documentary evidence about the dismissal is a factor taken into consideration. The Tribunal is satisfied that this was a dismissal without any or any fair procedure which therefore must render the dismissal unfair. The Tribunal deems the most appropriate remedy is compensation and awards €5,000-00 under the Unfair Dismissals Acts, 1977 to 2007.

The evidence having shown that the claimant received pay in lieu of his notice entitlement the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

No evidence having been adduced in this regard the claim under the Organisation of Working Time Act, 1997 must also fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)