

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD705/2010

against

EMPLOYER

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. D. Winston  
Mr F. Barry

heard this claim at Dublin on 23rd June 2011, and 6<sup>th</sup> February 2012

### **Representation:**

Claimant : Mr Darach MacNamara B L instructed by  
Dillon Geraghty & Co, Solicitors, 36 Brews Hill, Navan, Co Meath

Respondent : Director

The determination of the Tribunal was as follows:

### **Respondent's Case**

The respondent is a private limited company whose operations included the running of a public house in Dublin's south inner city. A director of the company who was familiar with the claimant told the Tribunal that the respondent in recruiting the claimant as a bar manager in April 2007 issued him with his terms and conditions of employment. Accompanying that statement was a copy of the respondent's disciplinary procedures that included many examples of what constituted gross misconduct. These included reporting for work and attempting to work while under the influence of illegal drugs or alcohol, any action or omission that puts the licence of the public house in jeopardy or brings the reputation of that pub into disrepute, and absenting oneself from duty without permission. A bar manager was an important position as the claimant was in charge of about thirty staff. In addition such a manager was expected to generate a minimum monthly monetary amount in sales.

From his time of commencement up to January 2009 the witness described his working relationship with the claimant as good. However, that situation deteriorated from that month onwards and throughout most of that year and culminated in the claimant's dismissal in September. In mid January and again in March the claimant reported for work smelling of alcohol and dressing

inappropriately. The witness issued him with a formal warning due to this. The witness also brought to the claimant's attention that he had not reached the minimum required level of sales for February 2009. In June this director issued a second warning to the claimant based on an alleged bullying issue, not attending to the bar on late nights, and on the basic cleaning of the bar. The claimant was notified that if further serious issues of competency occurred then his employment with the respondent would be terminated. The witness referred to another incident in July where it was reported that illegal drugs were present on the premises, which were somehow linked with the claimant.

On 20 July this director had a meeting with the claimant and the two men discussed the claimant's poor performance and behaviour at work. Almost a week later the same two people met and again the issue of the claimant's drinking was the main topic. The witness indicated to the claimant that his position with the respondent was under threat due to that behaviour. By the end of August the respondent had reportedly received a customer complaint and a staff resignation directly associated with the claimant's actions. On 7 September the witness met the claimant and presented him with a list of issues relating to his work performance. In a note relating to that meeting it was stated that the director dismissed the claimant at that meeting. A further note dated the same day and submitted to the Tribunal appeared to show that the claimant resigned from his employment with the respondent that day. The director commented that the claimant's performance had damaged the reputation and business of the public house and that despite his efforts to address that situation with the claimant he "got nowhere" with him.

A current part time bar supervisor and former colleague of the claimant was of the opinion that the claimant was "a good person" when not drinking but "difficult" when drinking. Towards the end of 2008 and acting on his own this witness started making diary notes on the claimant's observed behaviour at work. In referring to occasions when the claimant left work early he was unable to give the exact dates and added that he did not write down every incident.

The office manager said that in trying to have everything in order she issued contracts of employment to the staff. The claimant, however, never signed his. From early 2009 onwards she attended several meetings with the claimant and he never defended himself at those gatherings. She agreed that having and following procedures were important.

### **Claimant's Case**

The claimant commenced employment as a bar manager with the respondent in April 2007. There were up to thirty staff under his supervision at this busy public house. Being experienced and familiar with this work the claimant settled in well and apart from his normal duties he had extra tasks such as attending to alarms and security of the premises. He also had some leeway and flexibility into how he managed his staff and used his discretion at times in the style and approach he adopted towards them. He tolerated and indeed encouraged "wind-down" sessions allowing the staff some freedom in after duty in-house drinks. His loyalty to the respondent was demonstrated when he tackled a person who had just stolen goods from the premises.

However, the claimant had by early 2009 developed a strong attachment to alcohol. The working relationship between himself and the director deteriorated that year as he was accused of wearing improper attire, showing signs of wear and tear through the use of alcohol and of not meeting his sales targets. The claimant told the Tribunal that his attire was due to a chest infection and that sales targets for staff including him could not be accurately calculated on an individual basis. He also questioned the contention he was suffering from alcohol effects and in acknowledging his handling of

a white substance said that he threw it in the bin when it was brought to his attention.

On 7 September 2009 the claimant was called into an office where he met the director and office manager. He was not made aware of the nature of that meeting but soon discovered it was a disciplinary hearing. There he was handed a sheet of paper containing dates from 13 January to 31 August 2009 each one containing brief comments with the common theme of being negative about the claimant. The opening sentence of that sheet of paper read as follows: *This is a summary of events leading to your dismissal*. The claimant was shocked at this development and refused to resign when given that option. The director told him that he was a small fish in a small town. No offer to appeal the decision to dismiss him was issued.

### **Determination**

It is clear from the evidence that the claimant did not resign his employment with the respondent. It therefore follows that he was dismissed. The Tribunal had to consider, based on the adduced evidence, whether this was a fair or unfair dismissal. In considering that issue the Tribunal notes the manner and lack of procedure used on 7 September 2009 in issuing what effectively was a summary dismissal. It appears the decision to do that was made prior to the holding of the meeting of 7 September 2009. That action itself, notwithstanding any possible contribution from the claimant into his dismissal, renders that dismissal unfair.

The claim under the Unfair Dismissals Acts, 1967 to 2007 succeeds and the Tribunal awards him €35,000.00 as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

