

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1557/2010

MN1487/2010

against
EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr G. Andrews
Mr D. McEvoy

heard this claim at Limerick on 27th March 2012

Representation:

Claimant: Mr. Gerard O'Neill, O'Neill & Co, Solicitors, 25 Glentworth Street, Limerick

Respondent: Mr. Gerard Reidy, Wallace Reidy & Company, Solicitors, 24 Glentworth Street, Limerick

The determination of the Tribunal was as follows:-

Respondent's case

PC owner of the premises gave evidence that he ran a small bar with 2 employees. Shifts are usually 5 to 7pm and 10 pm to close. PC lived close by and was often there himself.

It was normal procedure that the employees would get two free drinks at the end of each night. He had reason to warn the claimant on numerous occasions to cut down on his drinking during working hours, customers had complained that he was drunk on duty and he had seen evidence of it himself.

An incident occurred on Easter Sunday night which led to the claimant's dismissal on Monday morning 5th April.

PC's niece was working with the claimant and told PC that he was drunk on duty. He also

got phone calls from customers saying that he was drunk.

He asked the claimant if he had been drunk, the claimant denied it. PC was sick and tired of the situation and told him to get lost. This occurred on the Monday morning. The claimant was paid up to date and PC heard nothing from him afterwards.

Under cross examination PC admitted that there was no contract in place.

He never had to sack anybody so had no procedure for doing so.

He had given the claimant three or four warnings and had told his accountant about the warnings. He had sent the claimant home one night about 3 months prior to this incident because he was drunk on duty.

On the night in question the claimant was on a break between 7 and 10pm. PC often had a drink himself but never during working hours, he had told the claimant on a previous occasion to "cop on".

SF a customer of the establishment gave evidence that she was there on the night in question. The bar was not busy, maybe 6 to 8 people were there, then a few more arrived. The maximum number of customers in the bar was 20, any barman could deal with it. The claimant was slow to serve people and was giving out wrong drinks. You could smell alcohol from him. She did not see him drinking but he was nipping in and out the back all the time. She was only one of the many who were complaining, people were leaving the bar because of him. SF told the respondent later that night about the claimant's behaviour.

Under cross examination SF said that she was a customer for over 10 years, she assumed that PC's niece also told him of the situation that night. SF presumed that she had reported the incident PC on the Sunday night in question because he normally came in at closing time but she could not be sure.

SM another customer of the establishment stated that he was not in the bar on the night in question but regularly received wrong drinks from the claimant, sometimes he would order and not get a drink at all. He complained on many occasions to PC but said that PC is the type of person who tries to keep everybody happy.

Claimant's case

GC in his sworn evidence stated that he worked on the day in question between 11.45am and 7.45pm. He then took a break and resumed at 10pm. He was not drunk or carrying on in any way.

PC came in just before 11pm and told him to have the place closed by midnight. He was angry and fuc... GC out of it, he said he never wanted to see him again.

GC vehemently denied ever receiving any previous warnings.

SF did come in after hours and he served her because she was a good customer.

Under cross examination GC said that he knew drinking during working hours was prohibited. He never received any previous warnings and had no idea why SF had said what she had said about him. PC blew hot and cold, he often arrived in shouting and if he was in a rage there was no talking to him. On the day in question he had driven home for dinner as it was Easter Sunday. When PC arrived on the night GC had pulled his 2 pints as usual, PC took them off him.

GC drove off and stayed in his mother's house that night. He has not spoken to PC since.

OW partner of GC gave evidence that he did drive home for dinner on the day in question, he was home between approx. 7.40pm and 9.20pm. He had food but no alcohol.

Determination

The Tribunal acknowledges the conflict of evidence

The respondent was unsure if he was on the premises on the Sunday night in question.

It is accepted that there were no payslips or terms and conditions of work in place.

Procedures were non-existent.

Nevertheless the claimant's evidence was less than compelling and not altogether in accordance with the T1A form submitted.

Accordingly the Tribunal awards a sum of €2,200 under the Unfair Dismissal Acts 1977 to 2007 and €800 under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

