

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

UD773/2010

WT331/2010

MN724/2010

against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. J. McGovern B.L.

Members: Mr. F. Cunneen

Mr. P. Woods

heard this claim at Dublin on 27th July 2011 and 18th November 2011

Representation:

Claimants:

Mr. Dermot Simms, Solicitors, Rivendell, Doddervale, Dublin 14

Respondent:

Peninsula Business Services (Ireland) Limited,

Unit 3, Ground Floor, Block S, East Point Business Park, Dublin 3

#### **Respondent's case**

The respondent operates a bar and restaurant and employed the claimant as General Manager from 19<sup>th</sup> September 2008 to 8<sup>th</sup> February 2010.

A director of the respondent (D.E.) gave evidence that there were a number of complaints made by customers about the claimant's behaviour at a benefit night on 6<sup>th</sup> February 2010 and on other occasions. These complaints were as below.

1. The claimant had knocked off the Liverpool game 6 minutes from the end and customers had complained about this.
2. D.E.'s Mother and Mother-In-Law were eating in the restaurant and the claimant passed a comment that they were only looking for another freebie.
3. A couple had a 2 year old child with O.C.D. and the claimant told them, in a rude

manner, to get her to sit down.

D.E. spoke to the claimant about these complaints on the 7<sup>th</sup> February 2010 but the claimant denied that these had happened. D.E. then took the sweeping brush and began to sweep the floor and the claimant grabbed the brush from him saying that he should not have to sweep the floor. D.E. then took the claimant by the wrist and led him out to the decking and told him to go home. The claimant shouted at him that he wanted €750.00 for his wages. D.E. perceived this to be a resignation and sought advice on the matter. However, the claimant turned up for work the next day as usual and D.E. sat down with him and as far as D.E. was concerned the matter was resolved.

At about 3:30 that same afternoon the respondent received a further complaint from a customer about the claimant. The customer complained that when she met with the claimant, in order to confirm a booking for her child's christening, he was rude and obnoxious. D.E. met with his two sisters, who were also directors of the respondent, in order to discuss the latest complaint and subsequently put this complaint to the claimant who denied it. D.E. returned to the office to discuss it further with his sisters and while doing so the claimant burst into the room ranting and raving. The claimant had the potential to be violent and D.E. told him to leave and that he was gone. D.E. was irate and felt there was no give and take on behalf of the claimant.

Having reviewed the events of the previous day D.E. sought to address the difficulty and invited the claimant to a disciplinary meeting. D.E. expected that the claimant would engage with him given that D.E. had previously allowed the claimant to rescind his resignation. However the Claimant replied to the respondent stating that, as he was no longer an employee, he would not be subjected to a disciplinary hearing.

A disciplinary hearing took place on 15<sup>th</sup> February 2010, without the claimant being present and a decision was taken to dismiss him. This decision was duly conveyed to the claimant.

### **Claimant's case**

At the outset the claimant withdrew his claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and under the Organisation of Working Time Act, 1997.

The claimant had an argument with D.E. on 7<sup>th</sup> February 2010 but stated that he had not resigned on that day. The claimant was told to go home and had asked for €700.00 that he had put into the float that day from his own money. He thought that D.E. knew about this and stated that another director confirmed this to D.E. the next day. The claimant sat down with D.E. on 8<sup>th</sup> February 2010 in order to discuss what had happened the previous day. Another director (S.E.) arrived with a note book in hand and the claimant said that if this was going to be some sort of a hearing that he wanted a witness. S.E. then left. The claimant sorted matters with D.E. and they shook hands.

However, later on the same day the claimant was summarily dismissed by D.E. on foot of a complaint from a customer in relation to a potential booking for her child's christening. D.E. arrived in with a piece of paper saying "this is it, we are not going to have this christening". D.E.'s uncles arrived in and the claimant heard S.E. say that the claimant had said he only had one set of hands. The claimant went into the office and said "I did not say that, I said I only have one tray" the claimant then left the office.

Subsequent to this D.E. came up to the claimant and pushed him in the chest saying “get out, your fired”. The claimant then left.

On foot of subsequent letters from the respondent the claimant sought reinstatement in order to facilitate “meaningful discussion”. However there was no such reinstatement and the claimant did not attend the disciplinary hearing held on 15<sup>th</sup> February 2010.

### **Determination**

It is the claimant’s case that he was summarily dismissed as General Manager of the respondent company. Based on the evidence heard the Tribunal considers that he was dismissed following a very heated exchange on the 8<sup>th</sup> February 2010. Despite this, on the 9<sup>th</sup> February 2010 the respondent wrote to the claimant suspending him on full pay. In the same letter DE, director of the respondent attempted to undo the dismissal by inviting the claimant to a disciplinary hearing on the 10<sup>th</sup> February. The claimant’s response by email was that he was no longer an employee of the respondent and could not be subjected to disciplinary proceedings. He did however say that he would consider re-instatement on the terms agreed by way of letter dated 27<sup>th</sup> January 2010. In the same email he made it clear to the respondent that he had taken legal advice and unless he was reinstated he suggested he would take action under the Unfair Dismissal legislation. On the 10<sup>th</sup> February 2010 the respondent wrote to the claimant again inviting him to a disciplinary meeting on the 12<sup>th</sup> February 2010 to which the claimant responded on the 11<sup>th</sup> February and reiterated his previous position. On the 12<sup>th</sup> February 2010 the respondent wrote two letters to the claimant stating, among other things, that the claimant was still an employee of the respondent, that he was subject the disciplinary meeting (albeit rescheduled) that was due to take place and that he was invited to bring a union representative or a colleague to the meeting. The final response from the claimant reiterated his position but also invited DE of the respondent to enter into ‘meaningful discussion’ on the matter. It is the claimant’s evidence that no ‘meaningful discussions’ ever took place.

On the 15<sup>th</sup> February 2010 the disciplinary meeting proceeded in the claimant’s absence and was attended by DE, SE and CE resulting in the claimant’s employment being terminated for gross misconduct.

It was clear to the Tribunal that there was a considerable conflict in the evidence proffered by both parties. The parties’ actions and correspondence up to the 12<sup>th</sup> February 2010 resulted in nothing more than a standoff. Issues arose over the course of one weekend following a sequence of complaints about the claimant from various customers and other persons.

The Tribunal accepts the respondent’s evidence that there were heated exchanges between DE and DL on both the 7<sup>th</sup> and 8<sup>th</sup> February 2010. Following the exchange on the 7<sup>th</sup> February DE gave evidence that he thought the claimant had actually resigned, however, the claimant denies this. Events came to a head on the 8<sup>th</sup> February which culminated in the dismissal of DL. The circumstances surrounding the dismissal render the said dismissal inherently unfair and the respondent’s efforts to mend its hand in the following week did not, and could not, undo the dismissal and the manner in which it occurred. However, the Tribunal feels that the claimant’s contribution to the said dismissal was very substantial. Based on the evidence given, this contribution arises because of the claimant’s denial and dismissal of the validity of the complaints and his attitude towards DE and his co-directors of the respondent over the course of the weekend in question.

The Tribunal finds that the claimant was unfairly dismissed and in all of the circumstances the

Tribunal awards him €5000 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal notes that the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were both withdrawn by the claimant.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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