

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**  
EMPLOYEE  
- *claimant*

**CASE NO.**

UD1107/2009

against  
EMPLOYER  
-*respondent*  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr M. Murphy  
Mr O. Nulty

heard this claim at Cavan on 29<sup>th</sup> March 2010  
and 30<sup>th</sup> November 2011

#### **Representation:**

Claimant(s) : Mr. Gerard Nevin, Keaney Nevin, Solicitors, 6 Tower Hamlet,  
Farnham Street, Cavan, Co Cavan

Respondent(s) : A. B. O'Reilly, Dolan & Co., 27 Bridge Street, Cootehill,  
Co. Cavan

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

Witness for the respondent gave evidence that two phone calls were made to his mobile phone between 5am and 6am on 31 January 2009. His partner rang the number from which the calls were made immediately and discovered that the calls were made from the respondent's hotel premises. She spoke with the night porter who gave the phone to the claimant. The claimant said Merry Christmas to the partner of the witness and hung up the phone. The witness had previously been in a relationship with the claimant.

Under cross examination the witness accepted that he could not hear anybody speaking to his partner on the phone on the night of 31 January 2009 but his partner told him what had been said.

The next witness for the respondent gave evidence that he works as a bar man for the respondent company. He was on duty on the night of 31 January 2009. The claimant along with some friends

came to the hotel at 5am approximately and bought some drinks. The claimant was intoxicated when she arrived at the hotel. The claimant made a phone call from the respondent's reception phone. The reception phone rang back immediately after the call and the caller asked to speak with the claimant.

Under cross examination the witness confirmed that he had no objection to the claimant arriving to the hotel at 5am requesting a drink.

The next witness gave evidence that he works as a bar manager in the respondent's hotel. At 12.30 pm on 30 December 2008 he overheard the claimant shouting at a guest in the foyer of the hotel. The claimant, who is normally shy and reserved, was intoxicated that day. Her behaviour was giddy. He informed the operations manager of the hotel as to what he had witnessed.

Under cross examination he confirmed that he had not witnessed the claimant drinking alcohol on 30 December 2008 and he did not smell alcohol from the claimant. He could not recall what the claimant shouted to the hotel guest. He agreed that the guest could have been a friend of the claimant's. He made a written statement about the incident about 9 months after the incident occurred. He was not aware of any actions taken by the operations manager after he reported the incident.

The next witness gave evidence that she has worked in the accounts department of the respondent company for the past 28 years. She reported for work at 8.04am on the morning of 30 December 2008. The night receptionist was still on duty and informed her that the claimant had not reported for work. The witness telephoned the Operations Manager at 8.45am and explained that the claimant had not reported for work. She covered the reception duties until the claimant arrived at work at 9.45am. The claimant gave her a hug when she arrived for work and the witness noticed a smell of alcohol from her breath. The witness then made a cup of tea for the claimant and went to work in the accounts department.

Under cross examination the witness confirmed that the Operations Manager arrived late for work at 9.15 am on the morning of 30 December 2008. She agreed that the claimant was a helpful employee. The claimant's normal daily working hours are 8am until 4.30pm. The respondent did not pay overtime. If extra hours are worked by employees this time is recorded as time in lieu and may be used at a later stage. The claimant was not entitled to any time in lieu on the week of 30 December 2008 as she had not worked beyond 39 hours per week previously.

In response to questions from the Tribunal the witness confirmed that she was not aware if the claimant had a residue of time in lieu from the preceding month. If she had a residue of time in lieu and wished to take time off this would have to be cleared by a Manager. A request for that leave must be made at least one day in advance. The witness made a written statement about the events of 30 December 2008 approximately 9 months later following a request to do so from the hotel proprietors. She confirmed that she did not report the fact that she had noticed a smell of alcohol from the claimant's breath as the Operations Manager was not on the premises at the time. The claimant did not clock in when she arrived for work on 30 December 2008 and this was unusual.

The next witness gave evidence that she was the Operations Manager for the respondent company. She reported slightly late for work after 9am on the morning of 30 December 2008. She was due to report for work at 9am and she expected to have a long and busy day as a wedding was due to take place in the hotel. She had telephoned the hotel earlier and spoke to the previous witness who

explained that the claimant had not reported for work. The claimant eventually arrived for work via the kitchen of the hotel. She was unapologetic for her late arrival and appeared joyful, frivolous and hyper. Normally she is shy and reserved. The witness believed the claimant to be under the influence of alcohol.

The witness was angry with the claimant and went to the ballroom area to prepare it for the wedding reception. She restricted her visits to the reception area that day. With the benefit of hindsight she believes that she should have sent the claimant home on the morning of 30 December 2008, but she did not take that course of action because she was a friend of the claimant. Later, at approximately 12.30pm she was informed by another work colleague that the claimant had been loud with hotel guests. She realized then that she had made the wrong decision in not sending the claimant home. The claimant did apologise to her during the course of the day but she did not specify what she was apologizing for. She confirmed that it is not acceptable that employees do not clock in and clock out for work.

The witness gave further evidence that a disciplinary meeting occurred on 18 February 2009. She was present at that meeting simply to take notes. The hotel Proprietor (RM) and the claimant were the only other people present at that meeting. The hotel Proprietor put a number of questions to the claimant but the claimant did not answer the questions which were put to her. She was not keen to respond to any of the questions.

Under cross examination the witness agreed she failed to deal with the issue. She received a verbal warning from the respondent for her failure to do so. An investigation was carried out by the respondent and she was not suspended as the investigation was being carried out. The respondent did not communicate in writing with her during the course of the investigation. She agreed that if she was faced with a similar situation again she would send an employee home. She stated that she was not present at a meeting on 11 February 2009. She confirmed that questions were put by the proprietor (RM) to the claimant at the meeting on 18 February 2009 concerning the events of 30 December 2008. She (the witness) noted the claimant's responses in writing and she believes she gave those notes to the hotel Proprietor at the conclusion of the meeting. She now has no knowledge as to the whereabouts of those notes.

In reply to questions from the Tribunal she confirmed that she did not report the matter. The claimant continued working throughout the day and there were no complaints about her work performance. The witness made a written statement about the matter on 16 February 2009 following a request to do so by the hotel proprietor. She could not recall the exact nature of the questions that were put to the claimant at the meeting of 18 February 2009.

The next witness gave evidence that she was one of the hotel Proprietors (KM). She looked after the Human Resources department and worked generally in the sales office. On 3 February 2009 she had received information from her husband that the claimant had made abusive phone calls from the hotel phone to a member of the public. An investigation was carried out during which further information came to hand concerning the claimant's behaviour at work on 30 December 2008. The claimant was suspended on full pay pending the outcome of the investigation. The claimant attended a disciplinary meeting on 18 February 2009 and the witness asked her to explain her version of events of 30 December 2008 and 31 January 2009. The claimant was very upset throughout the meeting and did not want to discuss the issues. She was too upset to discuss anything. The witness told the claimant that she would have to make a decision as the allegations were serious. The witness was of the view that the claimant could no longer be trusted and she was notified by way of a letter dated 24 February 2009 of her dismissal.

Under cross examination the witness stated that she had no recollection of attending a meeting with the claimant on 11 February 2009. She confirmed that the current partner of the claimant's ex-partner had contacted her husband (RM) concerning the receipt of abusive phone calls from the hotel phone. This person also made a written statement when requested to do so by the respondent. The witness accepted that her notes of the meeting of 18 February 2009 are very vague.

In reply to questions from the Tribunal the witness confirmed that she issued the claimant with a letter dated 24 February 2009 notifying her of her dismissal. She accepted that this letter makes reference to a disciplinary meeting held on 11 February 2009. She then stated "there obviously was a meeting". She had no recollection of this meeting. She also confirmed that the verbal warning given to the Operations Manager was in relation to her handling of the issues. The Operations Manager received that warning in February/March 2009.

On the second day of the hearing the partner of the respondent's first witness gave evidence. On the early morning of 31 January 2009 her partner's mobile phone rang twice from the same number and woke her up. She rang the number, got through to the respondent's hotel and spoke to the night porter. The witness told the Tribunal that she knew it had been the claimant calling her partner's phone as she had done so in the past. She rang the number a second time and asked to speak to the claimant. She asked the claimant why she had rang and was told "don't know what you're talking about, Merry Christmas" and hung up. She spoke to one of the hotel Proprietors (RM) about the incident.

On cross-examination she agreed she was a member of An Garda Siochana but it had nothing to do with this case. She had made a written statement regarding the incident but unsure when she had made it.

The then duty manager gave evidence. She had been in attendance as note taker at the meeting of 8 April 2009 with the hotel Proprietor (RM), the General Manager and the claimant. The claimant was offered to have someone with her but she declined. The hotel manager had questions to ask the claimant and she, the claimant, also had questions for him. The claimant would not answer any questions that day. The meeting only lasted five minutes and was adjourned for a later date.

The next meeting took place on 23 September 2009 and again the witness attended as a note taker. The claimant again declined having anyone with her. The hotel Proprietor (RM) read out statements from various people who were involved in the two incidents in question.

In response to the statements being read out the claimant said that she had not been shouting to a guest on December 30 2008 and then said she may have been calling out to a guest. She agreed she had been late to work on the same day. When asked had she been out the previous evening she replied that she could have been, later she said she had been and finally said she had been out socialising the previous evening. She apologised for being late for work that day. In relation to the third statement read out she replied it was not relevant.

In respect of her former partner and his partner relating to the early morning calls from the hotel to his mobile phone she made no comment. The witness and the claimant then left the meeting.

On cross-examination she said she could not recall where the original notes of the meetings were. When asked she said she had informed the other hotel Proprietor (KM) and KM took notes and the

witness typed it up.

The General Manager gave evidence. He attended both meetings of 8 April and 23 September 2009. The first meeting only lasted five minutes as the claimant would not answer any questions. After the meeting of 23 September 2009 he and the hotel Proprietor (RM) reviewed the notes taken at the meeting and statements given by various people. The CCTV footage of the calls made on the early morning of 30 January 2010 was also viewed.

The witness told the Tribunal that he was very disappointed in the claimant's behaviour and it was a very serious matter. Clients were very important. The decision was made to dismiss the claimant.

On cross-examination the witness stated the claimant had been a good person and had been great at her job. He said that he and the hotel Proprietor (RM) had made the decision to dismiss the claimant. When asked he said that he had investigated the matters concerned. He agreed he had met the claimant, and other staff, in a local pub in December 2008. It had been after an anniversary mass for a former colleague.

When asked by the Tribunal he said that he had not been present when the claimant arrived late for work on the morning of 30 December 2008. When asked he said that he had spoken to one person who had given a statement before the meeting on 23 September 2009 and another person after to clarify some matters. The claimant was not offered to view the CCTV footage.

#### **Claimant's Case:**

The claimant gave evidence.

On 6 February 2009 the hotel Proprietor (RM) informed her she was suspended with pay until a meeting was to be held two days later. She asked why and was informed that it was in connection to an early morning call from the hotel phone to a private number. She asked him to elaborate but he said he could not as he was investigating the matter. He was invited to and attended two meetings with the hotel Proprietor (RM) and the Operations Manager.

The claimant was asked to give her account of what had occurred on the early morning of 31 January 2009 as there was a complaint made about a telephone call made from the hotel. She was not told who had made the complaint. No statements from staff and other people were put to the claimant.

She again attended a disciplinary meeting on 18 February 2009. She was asked to step outside of the meeting for a time to refresh her memory of what had occurred on 31 January 2009. She asked was it the day she was late and she apologised. She explained that she had been late and had put her hand on her colleagues back to apologise. She asked if there had been a problem why had why had no-one said anything to her.

On 20 February 2009 she the hotel proprietor (KM) and asked was there any news. On 24 February 2009 she was sent a letter informing her she was dismissed. She contacted her solicitor to appeal the decision. She looked for the details of the witnesses and the statements they had submitted. Solicitors' letters passed between the two parties. The meeting took place on 8 April 2009. She wanted to know what the allegations were against her and why she had been dismissed. She requested her personnel file and wanted some answers to some questions but he would not answer. The meeting lasted five minutes. Delays occurred and the appeal hearing did not take place until 23 September 2009. She was refused liberty to bring her solicitor to the meeting. By September she

had received a copy of the CCTV footage and her personnel file. On 22 September 2009 she received copies of some of the statements.

At the meeting on 23 September 2009 she took notes at the meeting. The statements were read out one by one. She said she had not shouted at any guests and apologised for being late to work that day. Her colleague had also been late that day. On 27 October 2009 she was notified of the respondent's decision.

On cross-examination she agreed her former boyfriend's partner had rung the hotel. When asked she said that she did not recall being informed the witnesses who gave statements were available if needed. She said that if she had been intoxicated at work she could not understand why she had been allowed to continue working the rest of her shift. She told the Tribunal that she had never wanted to lose her job.

She explained to the Tribunal that she had used the hotel phone on the early morning in question as his mobile phone battery was dead. She had rung her former boyfriend by mistake, she had meant to contact her friend who seemed to have vacated the premises.

**Determination:**

Having considered the evidence of both parties the Tribunal finds for the claimant. The Tribunal was not satisfied with the manner in which the employer dealt with the matter and in the overall circumstances finds the dismissal unfair.

Taking all matters into account the Tribunal awards the claimant the sum of €25,000 (twenty-five thousand euro) under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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