

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Claimant*

CASE NO.
UD559/2011
MN600/2011

Against
EMPLOYER -*Respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr F. Cunneen
 Mr D. Thomas

heard this claim at Dublin on 25th July 2012

Representation:

Claimant: Mr. Brendan O'Hanlon, Mandate Trade Union, O'Lehane House,
 9 Cavendish Row, Dublin 1

Respondent: Finance Manager and General Manager

The determination of the Tribunal was as follows:

Summary of Evidence:

The claimant was employed as a sales assistant at the respondent's shop in an airport. The claimant was employed from August 2008 until she was summarily dismissed in August 2010. The employment was uneventful until an incident on the 5th August 2010.

The claimant was working from 8am that morning. The shop was busy and a customer approached the till with a product that would not scan. As was the case in such circumstances the claimant entered a code into the register to override the till and sold the item to the customer. This was common practice in order to keep the queue moving when a product would not scan. It was only some time after when the customer sought to purchase the same product from the claimant's colleague that the claimant realised that she had sold alcohol outside of the specified permitted hours of the respondent's alcohol license. The claimant knew the rules relating to the sale of alcohol but she had not realised that the time when she sold the alcohol. As soon as the claimant realised she informed the supervisor who told her that he

would speak to the general manager when he arrived at the store. The claimant was anxious for the manager to know straightaway.

The General Manager gave evidence that he was unaware that the claimant had reported the incident to her supervisor. When he became aware of the incident he checked the CCTV and ascertained that it was the claimant who had sold the alcohol. He also checked the register and observed that the alcohol was sold through the facility of an override button as would have to have been the case as the register is set up in such a way that it does not allow alcohol to be sold outside of legal hours. Each staff member had signed a document regarding the service procedures in relation to alcohol sales. During cross-examination it was put to the General Manager that this document failed to mention the times and days of restriction around the sale of alcohol and that in fact the claimant had noted such restrictions on the document herself. The General Manager accepted the document was incomplete.

There are serious consequences should the respondent be found to be in breach of its license and these include closure for a period of time or possibly even the loss of the sale of the alcohol license.

The General Manager called the claimant to a meeting in the office and put the matter to her. The claimant admitted making a mistake straightaway and apologised. He outlined to the claimant the seriousness of the matter. After this initial meeting which lasted approximately ten minutes the claimant returned to serving customers until she was called to a second meeting. At this meeting the claimant again admitted the mistake and apologised however the General Manager informed her that the matter constituted gross misconduct and that she was dismissed. The claimant asked for other sanctions such as suspension without pay to be considered but the director confirmed that he did not consider sanctions other than dismissal, despite the fact the company procedures allow for other sanctions. The claimant was upset and for that reason felt she was unable to work her notice. The General Manager agreed that she would be paid her notice but accepted that this had not in fact been paid to the claimant.

The claimant appealed the decision to dismiss as she felt it was unfair of the General Manager to take the ultimate sanction without taking into consideration her unblemished record. The appeal was heard by a director of the company who outlined the seriousness of the incident to her but told her that she was a very good employee, that he felt the decision to dismiss was harsh and that he disagreed with it. The director told her that respondent was opening a new store and that he would revert to her with a job offer. However the claimant did not receive an outcome to the appeal nor did she hear anything further from the company. Fortunately the claimant secured other work immediately following the dismissal.

Determination:

The Tribunal has carefully considered the evidence adduced. The Tribunal accepts that a very serious mistake was made by the claimant in the course of her employment. To her credit, the claimant had never resisted from taking full responsibility for the mistake of selling a bottle of alcohol out of the hours allowable under the respondent company's license.

In response to this incident the respondent company manager summarily dismissed the claimant for gross misconduct.

The Tribunal fully accepts that disciplinary action could be taken but accepts the claimant's

argument that her summary dismissal was disproportionate and unreasonable in all the circumstances.

In coming to its decision the Tribunal must have regard to the not uncommon practice of allowing till overruns where items are not ringing in; the fact that alcohol products are available for selection out of hours and the lack of automatic till reaction to the ringing in and out of alcohol out of hours. In short, it was left to the claimant to simply remember what time it was and when the out of hour's criterion lifted.

The Tribunal accepts that the claimant acted scrupulously and honestly at all times. The Tribunal notes the claimant is not at financial loss and awards the figure of €1,575.64 under the Unfair Dismissals Acts, 1977 to 2007 and €393.91 (being the equivalent of one week's gross pay) under the Minimum Notice and Terms of Employment Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)