

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NO.

EMPLOYEE - **Claimant**

UD893/2010  
MN848/2010

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: Mr J. Fahy BL

Members: Mr B. O'Carroll  
Ms H. Henry

heard this claim at Galway on 17 November 2011,  
14 March and 12 July 2012

Representation:  
\_\_\_\_\_

Claimant:

Ms Dawn Carney, Sheehan & Co, Solicitors, Augustine Court,  
St Augustine Street, Galway

Respondent:

Ms Sandra Masterson Power on the first and second days,  
Ms Michele Ni Longáin on the final day, both of Byrne Wallace Solicitors,  
88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:

The claimant was employed as a catering assistant in the restaurant in the respondent's store in Galway from August 2006. The employment was uneventful until October 2008 from which time the manager of the restaurant was not directly employed in the restaurant. After this time one of the five remaining members of staff in the restaurant (AS) was given supervisory responsibility.

The claimant's position was that from the time that AS assumed the extra responsibility AS

changed to the detriment of the claimant's relationship with her. On 19 June 2009 the claimant lodged a written complaint concerning her treatment by AS with the respondent. While this letter of complaint was addressed to the store manager (SM), who was about to go on annual leave, it was the human resource manager of the store (HR) who dealt with the complaint and met both the claimant and AS that day.

HR met both the claimant and AS in separate meetings and then at a second meeting the claimant accepted that there had been banter between them, it had not been one way only. AS was then brought in to meet the claimant and apologised to her, they shook hands and moved on.

When the store manager returned from annual leave he was dissatisfied with the performance of the restaurant and this, along with the complaint dealt with on 19 June 2009, caused him to institute monitoring of the CCTV cameras installed in and around the restaurant, including the kitchen. This monitoring carried on for 77 days throughout August to October 2009 and was conducted by the store security manager and his assistant, both of whom gave evidence to the Tribunal. On eight of those days of monitoring the claimant was observed in actions that contravened the agreed policies and procedures of the respondent. These actions include eating food from the restaurant in the kitchen and some violations of hygiene regulations.

On arrival at work on 23 October 2009 the claimant was called to an investigatory meeting which began at around 12-10pm. The claimant was accompanied by a colleague (AC) of the same nationality as the claimant, who had only recently commenced employment with the respondent and did not work in the restaurant. The claimant's position was that she was not allowed to be accompanied by her colleague of choice who also worked in the restaurant. The meeting was attended by the claimant, AC, HR, SM and the security manager.

At the outset of the meeting it was confirmed that the claimant was familiar with the respondent's procedures in relation to clocking, purchasing goods for her own use and food hygiene. The claimant was then asked if she had ever consumed food in the restaurant which she had not paid for. After becoming upset the claimant accepted that this had happened. HR told the claimant that it was happening every day the claimant was in the restaurant. SM began to show the claimant some of the footage and stills from the CCTV. The still photographs shown to the claimant relate to incidents on 8, 10 and 14 September 2009.

The meeting was suspended for some ten or fifteen minutes and the claimant told that when it reconvened the meeting would be disciplinary. The meeting reconvened at around 12-35pm with the same attendees. The claimant again accepted that she had consumed food from the restaurant. CCTV footage was again shown to her and the claimant was then suspended with pay. She was told to attend at midday the following day and warned that sanctions up to and including dismissal could be taken.

Apart from the security manager who was not in attendance, the same people attended the meeting on 24 October 2009 as had attended the two meetings the previous day. After going through the allegations against the claimant SM informed the claimant that she was dismissed for betraying the

bond of trust, breaching policies on time and hygiene and, defrauding the respondent in regard to the consumption of food she had not paid for. The dismissal was confirmed in a letter from SM dated 29 October 2009.

Despite there having been no mention of any right of appeal at the time the dismissal was effected or in SM's letter on 29 October 2009 the claimant wrote to the respondent's Head Office in a letter of appeal again dated 29 October 2009. This was acknowledged in a reply from the Regional Manager (RM) on 30 October 2009. On 24 November 2009 RM wrote to the claimant to notify her that, after reviewing her personnel file, all notes and minutes with regard to the dismissal, the letter of dismissal and the letter of appeal, the dismissal stood.

### **Determination**

The Tribunal has considered all the evidence and submissions of the Claimant and Respondent. The Tribunal notes that the Claimant made a complaint to the Respondent in June 2009 concerning the conduct of another employee towards the Claimant which had been going on for some time. The Tribunal is satisfied that following an investigation by the Respondent into the allegations, which were well founded, that matters between the parties were resolved and the Tribunal does not accept that there were unresolved issues which, concerning the Claimant's complaints, forms part of her subsequent dismissal.

The Respondent had concerns relating to stock shortfalls and installed CCTV cameras at its T-Piece Restaurant, where the Claimant worked with other employees. The cameras were installed in July 2009 and the stills available to the Tribunal, show the Claimant consumed food in the food preparation area, along with drinking some beverage. The stills also show the Claimant removing her shoe and sock in the food preparation area. The Claimant admitted consuming food in the food preparation area. The Respondent's Employee handbook at 4.8 General Rules and Regulations says "Eating and drinking is not allowed anywhere other than the canteen/tearoom". The Applicant was called to an investigation meeting on 23 October 2009, with the Respondent, without any advance notice or warning of the purpose of calling the meeting, the meeting lasted for some twenty minutes and thereafter a hastily convened disciplinary meeting was arranged which took place some twenty five minutes after the investigation meeting. A further disciplinary meeting took place on 24 October 2009 at which the Claimant was told that she faced dismissal from her employment for betrayal of the bond of trust. A letter confirming the dismissal was sent to the applicant on 29 October 2009.

The Tribunal determines that the decision to dismiss, based on the consumption of food in the food preparation area and for breach of company hygiene regulations, was a disproportionate response to the Claimant's actions and was unreasonable and accordingly the dismissal was unfair in all the circumstances. The Tribunal also notes that another employee, identified in the stills, of having breached company policy relating to food consumption in the food preparation area still works for the Respondent and was not the subject of any form of discipline. The Tribunal finds that the response never fell within the bands of reasonableness proportion put forward by the Respondent. The Tribunal finds that the Respondent's conduct fell far short of good industrial practice particularly relating to the manner of carrying out the investigation and disciplinary hearing, which

appear to have been conducted with a desire to obtain a particular result rather than afford the Claimant all due process. The Respondent also failed to advise the Claimant that she was entitled to appeal the decision to dismiss her.

The Tribunal feels that a more reasonable approach would be to warn the Claimant of her conduct at an early stage, after identifying her as having breached company rules relating to eating food in the food preparation area and also for breach of hygiene rules. The Tribunal is satisfied that the claimant was unfairly dismissed and awards €15,000.00 compensation under the Unfair Dismissal Acts, 1977 to 2007.

The Tribunal further awards €522-98, being two weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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