

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO:
UD282/2010
MN262/2010

- claimant

against

EMPLOYER

- respondent

EMPLOYER

- respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison
Mr. M. McGarry

heard this appeal at Castlebar on 31 May 2011
and 16 January 2012

Representation:

Claimant: Tuohy & Company, Solicitors, Unit 2, Earls Mews,
Lord Edward Street, Ballina, Co. Mayo

Respondent: Bourke Carrigg & Loftus, Solicitors, Teeling Street, Ballina, Co. Mayo

The decision of the Tribunal was as follows:

Background:

The claimant was employed as a junior hair stylist from February 1st 2006. On the evening in question, November 10th 2009 the owner of the business (LOH) was attending to a client that had arrived late for her appointment. The owner had an appointment with her accountant soon after. She asked the claimant to ring the sale in and to start cashing up the takings in the till.

CCTV footage was viewed by the Tribunal regarding the alleged incident.

Respondent's Case:

The owner's father (TOH) gave evidence. He explained that he had entered the premises around 6.00 p.m. to meet his daughter to accompany her to the meeting with the accountant. He walked up to the desk where the claimant was. On his approach she raised her hand up and inside her clothing on the left side of her upper body. She was quite startled and he told the Tribunal that he could see what he thought looked like a tiny bit of paper in between her hand and her upper torso. He made no comment.

He told the Tribunal that the claimant was very jittery and very talkative. He was taking rubbish out to the car and the claimant insisted on assisting him but he told her he could manage it. When walking to the accountants office later with his daughter he told her what had happened and that he knew the claimant had done something.

On cross-examination he stated he had given a statement to the Gardaí some time later. The CCTV footage was now viewed by the Tribunal and it appeared the witness entered the premises at 17.28 p.m.

The owner of the business (LOH) gave evidence.

On the day in question only she and the claimant were working. There were no problems and it was a quiet day. She had an appointment after the salon closed with her father and her accountant. The witness's last appointment was running late. She asked the claimant to cash up the takings. Her father entered the salon they closed up and went to the accountant. Her father told her what he had observed with the claimant at the till.

When she arrived she counted up the takings. It was € 23.00 short. She explained that it could have been down a couple of Euro possibly due to a small petty cash purchase, possibly € 3.00. A few days later she viewed the CCTV footage with her husband. She explained to the Tribunal that it had taken a few days to do anything as she was in the middle of a Revenue audit at that time. She again viewed the CCTV footage.

On November 17th 2009 she had her friend and sister-in-law (KM) entered the salon. The claimant arrived for work a little time later. KM had already viewed the CCTV footage. She asked to speak to the claimant and asked her had she anything to disclose to her. The claimant put her hand to her chest (like her father had observed on the day in question) and asked the witness did she, the owner, think she was a thief. She again asked if the claimant had anything to tell her. She told the claimant that she had CCTV footage. The claimant said that she could have been scratching her neck.

The witness told the Tribunal that she tried to get the claimant to admit it. The claimant got very irate. The witness and KM decided to leave the claimant to cool down and went across the road for a coffee. On their return they found the claimant to be locked in the bathroom. She asked the claimant to leave but she would not. She told the Tribunal that she had no alternative but to contact the Gardaí, which she really did not want to do. She told the claimant she was suspended and the claimant left before the Gardaí arrived. The following day she sent the claimant a letter, dated November 17th 2009, to dismiss her.

On cross-examination she stated there was no disciplinary procedure in place, it was a small business. When put to her if she had shown the claimant the CCTV footage she replied she had not. She stated that she had investigated the matter fairly as when she viewed the footage she could see a bit of paper in the claimant's hand. She told the claimant that if she came clean the Gardaí would not be involved and she could leave without anyone knowing why.

She told the Tribunal that she had made the decision to dismiss after considering what her father had told her, viewing the CCTV, discussing the matter with the claimant and after the Gardaí had viewed the footage. The Gardaí case went no further.

No minimum notice was paid to the claimant as she was dismissed for gross misconduct. The claimant was paid all monies owed to her – 2 days work and 3 days annual leave to the value of € 320.00. When put to her that the claimant was paid € 68.00 a day and this would come to a total of € 340.00, this being € 20.00 short, the witness replied that she would not be so petty to deduct € 20.00 for monies owed.

The owner's friend and sister-in-law (KM) gave evidence. She was also an employee of TOH. She had viewed the CCTV footage and had attended the salon with LOH on November 17th 2009. She stated that she had been an impartial observer on the day.

LOH asked the claimant had she anything to disclose. The claimant got very upset. The claimant was told about the CCTV footage and she said that she could have been scratching her shoulder. She agreed the conversation got heated and felt they should all take a break. LOH and herself left to go have a coffee and the claimant was told to make a cup of tea for herself. On their return the claimant was locked in the bathroom. LOH told her that if she came clean the Gardaí would not be involved. The Gardaí were called because the claimant would not leave, but a while later she did after she was informed she was suspended.

On cross-examination she said that she understood the claimant had been upset.

Claimant's Case:

The claimant gave evidence. On the day in question she had been asked by LOH to ring the late sale of her clients treatment into the till and to cash up the takings. The claimant said the treatment was to the value of € 18.00. She explained to the Tribunal that there had been a robbery some time previous in another business and when TOH entered the salon and approached the desk he startled her and she put her hand to her chest. She said that he had been doing all the talking at the time. She offered to give him a hand putting rubbish away.

On her arrival to work on the following November 17th 2009 LOH and KM were present. LOH told her she wanted to speak to her and demanded her on a number of occasions for a voluntary disclosure. She replied that she did not know what LOH meant. The claimant asked LOH was she accusing her of stealing. She told the Tribunal that she would never have taken € 20.00, she had worked for the salon for nearly four years. LOH said she would contact the Gardaí and better own up. The claimant said she did not know what to do. LOH and KN left and she tried to contact her parents to come to the salon. She was on the phone in the bathroom when they returned. She was extremely upset. She was told she was dismissed and left.

The claimant gave evidence of loss.

On cross-examination she stated that she had not been told prior why LOH wanted to speak to her and she had not viewed the CCTV footage. She also informed the Tribunal that the CCTV footage she had viewed with her solicitor was not the footage shown on the day of the hearing. She said LOH had been very accusatory towards her on November 17th 2009.

She told the Tribunal that she had never referred to scratching her shoulder, TOH had shocked her when walking up to the desk as she had not seen him enter the premises.

Determination:

The Tribunal have carefully considered the evidence adduced in this case. The Tribunal finds the claimant was unfairly dismissed. Accordingly the Tribunal awards the claimant the sum of € 2,600.00 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established the Tribunal awards the sum of € 404.00, this being two weeks gross 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)