

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

- claimant

against

EMPLOYER

- respondent

under

CASE NO.

MN1544/2010

UD1618/2010

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr D. Moore
Mr J. Moore

heard this claim at Drogheda on 28th August 2012

Representation:

Claimant(s) : Mr. Francis Watters, Thomastown, Kilkenny, Dundalk, Co Louth

Respondent(s) : General Manager

The determination of the Tribunal was as follows:-

Background:

The claimant was employed firstly as a Bartender and later promoted to Bar Manager. A number of issues were raised with the claimant regarding his time keeping, breach of confidentiality and poor performance.

Respondent's Position:

The previous General Manager and a Director (EmcG) of the company gave evidence on behalf of the respondent. The General Manager had spoken to the claimant concerning various issues that had arisen over time.

On Wednesday September 2nd 2009 (or Thursday 3rd 2009, there was some confusion) a disciplinary meeting was held with the claimant and two of the Directors (EMcG) and GM. The claimant denied the offer of having a representative with him. The claimant was informed that he could be dismissed. They went through all the incidents with him and informed him that he could be dismissed for them. A final written warning was issued to him. He accepted the facts and said that he would comply with regulations.

On Saturday September 12th 2009 the claimant contacted the receptionist about a half hour before he was to commence his shift as Manager saying he had a problem with his contact lenses and his eyes were bloodshot. He arrived three and a half hours later for work. He had been on a day off the day before. He had informed the receptionist that he was contactable if required. The General Manger met the claimant and spoke to him. He was informed there would be another disciplinary meeting on Friday September 18th 2009. The claimant the General Manager and one other attended.

On Friday September 18th 2009 the issues were then discussed. The claimant was handed a letter of dismissal. The witnesses told the Tribunal that he had been consulted before the disciplinary meeting. The claimant was not given the right to appeal the decision. The claimant signed the letter. Both witnesses decided to dismiss the claimant.

Claimant's Position:

The claimant gave evidence. He did not recall some of the incidents that had occurred. He told the Tribunal that he had no prior knowledge that the meeting of September 2nd / 3rd 2009 (Wednesday / Thursday). He was not sure what time it took place in the evening. He did not remember receiving the letter of final warning.

On Saturday September 12th 2009 he rang the hotel receptionist and informed her he had a problem with his contact lenses and needed to attend his optician to obtain some solution. He informed her that if he was required he could be there as soon as possible but did not attend the hotel, which was approximately 300 metres away so ascertain whether all other staff rostered were present. He attended his optician some short distance from the hotel but did not attend his place of work until later.

The General Manager contacted him and invited him to a meeting with another member of staff. He was informed the Directors were not happy with him. He told the Tribunal that he knew the respondents wanted him gone. He told the Tribunal that the day he was dismissed there were three pieces of paper on the desk. The General Manager had not typed anything while in his presence. He said that he had been shocked and signed it very naively. The claimant gave evidence of loss.

Determination:

The respondent's evidence was that the claimant was late for work on a number of occasions and had been warned about this both verbally and in writing. In addition the respondent was unhappy with some aspects of the claimant's performance. The claimant also had some other issues with claimant's behaviour towards colleagues but since these colleagues were not present to give evidence at the hearing this alleged improper behaviour formed no part of the Tribunal's determination.

The claimant was summoned to a meeting on the 3rd September 2009 with two directors of the company, EMcG and GM. This meeting was held to discuss the respondent's view of the claimant's performance. The respondent issued a "Final Warning" on the Thursday 10th September 2009 as a result of the meeting on the 2nd/ 3rd (Wednesday / Thursday) September 2009. The claimant denied getting this letter and no direct evidence was given as to how this letter was delivered to the claimant. The claimant was dismissed from his employment on the

Friday 18th September 2009 for being three and a half hours late for work on Saturday 12th September 2009.

The Tribunal holds that there was a dismissal whether it was on Saturday 10th September 2009 or the Saturday 18th September 2009 and that the employer did not act reasonably. Indeed Section 5 of the Unfair Dismissals (Amendment) Act 1993 provides that the reasonableness of the employer's conduct is now an essential factor to be considered in the context of all dismissals. Section 5, inter alia, stipulates that:

".....in determining if a dismissal is an unfair dismissal, regard may be had.....to the reasonableness or otherwise of the conduct (whether by act or omission) of the employer in relation to the dismissal"

Having considered the totality of the evidence the Tribunal determines that the claimant was unfairly dismissed and deems compensation the most appropriate remedy.

The Tribunal has regard to the contribution made by the claimant towards his dismissal (in particular his punctuality and his failure to call into the Hotel on Saturday 12th September 2009 when he was close by to satisfy himself everything was in order)

The Tribunal therefore awards the claimant the sum of € 2,260.00 under the Unfair Dismissals Acts 1977 to 2007. The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)