

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.  
UD1811/2010  
PW241/2010

EMPLOYER                    -*appellant*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE                   -*respondent*

-v-

EMPLOYER                   -*appellant*  
under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman:    Mr. P. Hurley

Members:    Mr. W. O'Carroll  
                  Mr. F. Dorgan

heard this appeal at Ennis on 28th March 2012

#### Representation:

Appellant: Mr Gearoid Howard, Crimmins Howard,  
Solicitors, Dolmen House, Shannon, Co Clare

Respondent: Mr Conor Glendon, Conor J Glendon & Co,  
Solicitors, Ard Na Gréine, Clonroadmore, Ennis, Co Clare

#### **Background:**

These cases are before the Tribunal by way of an employer appealing the Recommendation of the Rights Commissioner ref: r-084811-ud-09 under the Unfair Dismissals Acts, 1977 To 2007, and the Decision of the Rights Commissioner under the Payment Of Wages Act, 1991, ref: r-084810-pw-09. It must be noted that the Rights Commissioner Decision noted that the claim under Payment of Wages Act, 1991 was conceded by the employer at the outset of the Rights Commissioner hearing. The claim under the Payment of Wages Act, 1991 was not prosecuted at the Tribunal hearing. The appellant is the employer the respondent is the former employee who is referred to as the employee.

#### **Appellant's/ Employer's case:**

The Tribunal heard evidence from the security manager of the hotel. He explained that there were two night clubs and two bars at the hotel. There were renovations from January to May 2009. He himself commenced working in the hotel in May 2009. He introduced himself to the staff and explained that he was taking over as head of security. He told security staff that they were getting radios and ear pieces and that they were to use them. He told them that they were not to use their mobile phones during work. He explained the evacuation procedures and fire

procedures. He also explained the positions they would be rostered for and that they be in place and ready to commence when at 11.00 pm when the night club opened. The witness explained that he is licensed with the PSA and in training procedures. He trained staff in conflict resolution and breakaway techniques.

When the night club re-opened on 01<sup>st</sup> May 2009 he met the respondent employee who had asked to meet him. He told the employee that he was not 100% happy with his work, because of his work ethic and his tendency to stay in the background. The employee did not agree with him but he did apologise. He did not have a problem with a language barrier.

The employee was rostered from 11.00 pm up to 3.00 am and assigned the back gate/ back wall. If the main gate at the front was busy they would use the back gate as an overflow and he would assign two security people there. When the pressure eased off the front door he would then close the back door and re-assign the two security people to their original positions.

Towards the end of a shift he radioed the employee and there was no response. He tried to contact him twice more. He went to the back gate and the employee was not there. He then radioed the camera security person (CSP) to see if he could locate the employee. They have 60 cameras. CSP was not able to locate the employee. He did see that the employee signed out in the sign out book at 2.50 am.

The witness explained that the employee could not leave their positions early unless they asked. Since 01<sup>st</sup> May the practice was that staff were not to leave until the last customer had left the premises. The bars close at 2.10 am and the music stops at 2.15 am and they allow 20 minutes plus or up to 3.00 am drinking-up time. All security staff have different roles in checking the night club at the end of the night. The employee in question had responsibility for the area where the bar staff were cashing-up.

The doors at the back gate were open and they were twenty meters from the cashing –up area. The cashing-up was not done until all the people left the club. (The employee had left at 2.50 am). After this incident he took the employee off the roster for a week. The employee texted him to meet him and he agreed to meet the employee. He asked the employee for an explanation and he had none. He said he would have to terminate his employment because of dereliction of duty. That it was a very serious thing that he did to leave the back door open and that he did not comply with company policy.

In cross-examination it was put to the witness that the employee's duty was at the back wall and not the back door. The witness disagreed with this. It was put to the witness that the employee admitted he left at 2.55 am but that the night club was empty. The witness replied that no other staff signed out before 3.00 am.

The witness was asked when he decided to dismiss the employee. He said he spoke to the financial controller, and when he met the employee he was waiting for an answer (for an explanation) and the employee did not give him one so he dismissed him.

### **Respondent's/ Employee's case:**

The Tribunal heard evidence from the employee who told the Tribunal that he worked as a night porter and as a security person as well. As a night porter he works from 11.00 pm to 7.00 am. At the weekend he works as a security person.

In May 2009 he had a meeting with the security manager and there was another person (NM)

present. He asked security manager why his hours were reduced and he was told that everybody's hours had been reduced.

The witness explained his normal security work routine. He himself was not a "bouncer". He arrived for security duty and collected his radio then the manager tells the staff where they were to work. His work was designated at the back wall and not the back gate. The manager told them that the work would not change. At the start of the night he checked the customer tickets.

He then returned to the back wall and kept an eye out that nobody tried to enter the premises over the back wall. It was for the security guards proper to deal with the actual door duty.

Regarding the night he left when there were patrons still in the club he explained that the patrons were in the VIP bar. They were the owners and their son and daughter. There was one security man looking after them. He usually stayed until 3.00 am.

He himself was not a "bouncer". If there was a security incident the security guards dealt with it. If he had to stay then he would be told. When asked why he felt it was ok to leave at the time he did he explained that in the last four years everyone did that; they put the customers out and then left. The gate was not his responsibility. When he finishes work he goes to reception and leaves his radio there and signs out.

He did not receive a letter from the security manager. He arrived for work in his uniform and he was told by the security manager that he was not working. The security manager did not say anything to him for five or six weeks. The security manager did not tell him he was dismissed he told him that he was not giving him any work/hours and that he could get a letter at reception. He called to reception a few times but did not get a letter. The security manager never called him. The security manager referred him to the general manager and the general manager referred him to the security manager.

**Determination:**

Even if it was proven to the satisfaction of the Tribunal the extent of the employee's duties and his alleged negligence the sanction of dismissal was too extreme. The employee was summarily dismissed. The employer did not give the employee warnings. No adequate procedures were used in the dismissal. Accordingly, the Tribunal unanimously determines that the respondent employee was unfairly dismissed.

The Tribunal varies the Recommendation of the Rights Commissioner ref: r-084811-ud-09, under the Unfair Dismissals Acts, 1977 To 2007, and awards the employee €9,750.00.

The appeal under the Payment of Wages Act, 1991, ref: r-084810-pw-09 was not prosecuted at the Tribunal hearing.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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



