

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD2204/2010

- *claimant*

Against

EMPLOYER

- *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan
Members: Mr. N. Ormond
Ms M. Finnerty

heard this claim at Dublin on 21st June 2012 and 13th September 2012

Representation:

Claimant: Ms. Susan Jones B.L., Mr Paul Stack, P & G Stack, Solicitors, Main Street,
Maynooth, Co Kildare

Respondent: In Person

The determination of the Tribunal was as follows:-

Respondent's Case

The café bar supervisor ER noticed the claimant (RD) on the 23 April 2010 loading food items from the kitchen into his car. She assumed he had permission from management to cater for an outside event. The following day when the manager (TR) was looking for dishes and fuel ER mentioned to him that the claimant may have the items as she had seen him loading his car the previous evening.

TR discussed the matter with DT (Director) and at a meeting on the 28 April 2010 DT asked the

claimant if he had catered for a party. The claimant told him he had catered for a private barbeque for a group of forty people. He said he had used nothing from the company to cater the event. TR did not accept that it was regular for staff to order food for personal use through the company but accepted that it was on occasion following DT giving permission. He had no note of that meeting and confirmed that it was just the three of them present.

Human Resources Manager BMcC told how DT discussed the issue with him and they decided it warranted a formal investigation as set out in the company handbook. A letter issued to the claimant inviting him to attend an investigation meeting. The claimant accompanied by another member of staff (GS) attended the meeting where the allegations of using the company kitchen for personal reasons without permission and use of company materials were put to him. He admitted he should have sought permission in advance and added that he used limited time in the kitchen and had paid for anything ordered from suppliers to the company. He said others ordered food and paid cash on delivery. Following that meeting DT took the decision to hold a disciplinary meeting. Notice of the disciplinary meeting was hand delivered to the claimant and took place on the 9 May 2010. DT was in attendance but did not make any comments. At the meeting the claimant was informed of the outcome of the investigation and that his action was considered gross misconduct. The claimant apologised and indicated his regret. BMcC was satisfied that the claimant was given every opportunity to call witnesses and fair procedures were followed. On the following day DT advised that he had decided to dismiss the claimant and a letter dated the 10 May 2010 was delivered to the claimant advising him of his dismissal and how the decision was made with regret. Although a right to appeal the decision was indicated in the letter the claimant never availed of this process.

The employee GS who accompanied the claimant to the first meeting told the Tribunal that the claimant showed him a letter and asked him to accompany him to the meeting. He attended that meeting as a witness only. He could not recall the claimant giving him cash to pay for a delivery on the 23 April 2010 and could not recall if he was working on that date.

DT on the morning of the 24 April 2010 learned of the claimant preparing the previous day for a private function. He had some concerns about items being used by the claimant and at a management meeting on the 27 April he asked the claimant about the private catering job. The claimant informed him that he had not used any items of the company and paid suppliers for food ordered. Later having discussed the matter with the HR manager he decided a more formal investigation was required. At the investigation meeting the claimant admitted to using general kitchen items such as tin foil, cling film and spending approximately thirty minutes preparing food. DT believed it would take at least two hours to prepare food for forty people and that the claimant as head chef knew permission to carry out such work was required from him. A disciplinary meeting was then arranged by the HR manager. The reason for his decision to dismiss the claimant was gross misconduct. He could no longer trust him and as the claimant was a working manager it was important he was setting a good example to other employees.

Claimant's Case

The claimant worked for the respondent company as a chef, in their restaurant operation, for a number of years. During the course of his employment, his colleagues and himself, had used the company kitchen to prepare for personal catering functions, e.g. birthday buffets, bbq's etc. The claimant had previously used the company kitchen for personal use to cater a function for approximately 80 people. On that occasion he had sought permission from his manager, DT, who said that it was no problem provided that goods were invoiced and paid for directly by the

individual using the kitchen for personal use. This practice occurred regularly within the respondent company.

In April 2010 the claimant was using the company kitchen for personal use to cater for a friend's barbeque. He placed separate orders for the products he required on the Thursday and these were delivered to the respondent company, for the claimant's attention, on the Friday morning. The claimant was not present at the time of the delivery to accept or pay for the products. His colleague paid for the vegetables and the claimant reimbursed him at a later stage. The claimant paid for the meat order a few days later, within the week of the order.

The claimant prepared for the barbeque on the Friday morning, which took approximately 15-20 minutes. During the preparation he used some products belonging to the respondent, such as tin foil, spices, mayonnaise. Later that day he phoned the head chef on duty and asked him to put the potatoes, which were already prepared, into the oven for half an hour.

On Wednesday 28th April 2010 the claimant was approached by TR, who informed him that DT, the claimant's manager, wanted to talk to him about what products and utensils the claimant used from the respondent's kitchen to cater for the barbeque. The claimant met with DT and TR and confirmed that he had used the kitchen for personal use the previous Friday. He also explained that he ordered the products used in his own name and they were invoiced directly to him and not the respondent company. DT told the claimant that he was not happy about the claimant using the kitchen for personal use without having sought prior permission. At the end of this meeting the claimant was told to return to work.

On 8th May BMcC, told the claimant that he had been instructed by DT to meet with the claimant and talk to him about the incident of using the kitchen for personal use on Friday 23rd April. BMcC informed the claimant that DT was not happy about the situation and they required him to attend a meeting the following morning at 10am. The claimant was told that he could bring a witness to the meeting. The claimant told the Tribunal he did not receive any written notification in respect of the meeting scheduled for the 9th May. The claimant returned to the kitchen and informed a colleague about the situation. The colleague told the claimant that he would attend the meeting with him the following day.

On 9th May the claimant and his colleague met with BMcC. The claimant was asked for details about the events of 23rd April. The claimant explained that the produce was delivered for his attention and the invoices were made out directly to him. He also explained how much time he spent preparing the produce for the barbeque, the delivery of produce on 23rd April and what products he used which belonged to the respondent. The claimant provided all details required and explained that he also received a delivery of free bread and provided the docket for same. There were notes taken at this meeting which the claimant signed. The claimant told the Tribunal that although the notes stated the meeting was in relation to gross misconduct he was not given any indication that his job was at risk.

On Sunday morning, BMcC reverted to the claimant telling him that a meeting would take place with DT at 6pm that day. The claimant was due to finish his shift at 4pm but remained in work to attend the meeting. At this meeting the events of 23rd April and subsequent investigatory meetings were listed to the claimant. The claimant agreed with the sequence of events but not with the necessity of the investigatory process. When the meeting concluded the claimant was told to come in on Monday morning for another meeting. He was not told to bring a witness to that meeting.

On 10th May the claimant attended the arranged meeting and was handed a letter by BMcC. The letter said that the instances of 23rd April and his response to the investigatory process was an issue of gross misconduct and as a result his employment with the respondent company was being terminated.

During cross examination the claimant confirmed that he paid for the meat delivery one week after the meat was received and his colleague paid the driver for the vegetables at the time of delivery. The claimant reimbursed his colleague for the vegetables.

The claimant agreed that he signed off on the notes of the meeting of 7th May but insisted that he did not receive written notification, dated 6th May, of the meeting to take place on 7th May. He was approached by BMcC in the kitchen who informed him that there would be a meeting the following day. The claimant confirmed that he was made aware of all of the meetings verbally from BMcC.

The claimant confirmed that he did not invoke the appeal process because he felt that there was no trust left in the working relationship.

Determination

Taking all of the evidence and the claimant's employment record into consideration the Tribunal is of the opinion, that in the circumstances outlined, the punishment did not fit the crime and the claimant was unfairly dismissed from his employment with the respondent company. The Tribunal finds that the incident and subsequent events surrounding same did not amount to gross misconduct. Accordingly, the Tribunal awards the claimant the sum of €10,000.00 under the Unfair Dismissals Acts 1977 to 2007.

This _____

(Sgd.) _____
(CHAIRMAN)