

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

claimant

UD945/2011

MN1084/2011

against

EMPLOYER

respondent

under

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. Taaffe

Members: Mr. M. Flood
Mr J. Maher

heard this claim at Dublin on 8th October 2012

Representation:

Claimant(s): Hughes & Liddy, Solicitors, 2 Upper Fitzwilliam Street,
Dublin 2

Respondent(s): Mr. Conor Bowman BL instructed by McCartan & Burke, Solicitors,
Iceland House, Arran Court, Smithfield, Dublin 7

The determination of the Tribunal was as follows:-

Respondent's Case

AK one of the directors of the respondent company told the Tribunal that the respondent provides budget accommodation and has fifty four rooms. It has twelve employees. The claimant was employed in July 2008 as a receptionist and she received her dismissal notice on the 14th February 2011.

A guest Mr. B was given accommodation long term and charged a nominal weekly rent. A complaint was made regarding this guest during the first week of February 2011. One of the housekeepers found a pizza at the end of the bed in Mr. B's room as Mr. B failed to clean up after him. He called Mr. B the next evening and told him about the state of the room and that he would have to find someplace else to live. Mr. B. asked the director if he had any

apartments/flats and he told him that he had a small bedsit. He asked Mr. B if he had paid his bill and Mr. B told him that he owed around €2,300.00 and he offered him his laptop. Mr. B did not tell him that he had an arrangement with the claimant to pay the bill. He told Mr. B that no one was getting those terms. The claimant would not have his authorisation to do this.

On Monday morning after 10.00a.m. he asked the claimant about the guest Mr. B. and how his bill came to €2,300.00. The claimant told him that M. B. promised to pay this. The director told the claimant that he was very surprised to hear this and if she wanted to continue working with the respondent that she could pay the balance to him. The claimant told him she did not have the money. He told her if she did not have the money “you know what is in store for you”. He was in and out a couple of times that day and returned at 6.30p.m. He discovered that forty five bookings were not put through the system; this was the claimant’s job. At this time he realised that if the claimant were to remain in work for the remainder of the week she could have done untold damage with messing up bookings. He told the claimant that he did not need her and to call in on Friday for a few bob and bring the keys with her.

The code for accessing the computer was changed without his authority. The rates for bookings were higher on bookings.com than the rates that the respondent had advertised. The claimant did not leave the computer codes in the respondent’s premises. It took approximately four and a half months before he could gain access to the codes. The claimant had no authority to change the codes.

In cross examination he stated that he discovered three to four days after he dismissed the claimant that the codes were changed. He was not aware of a contract of employment and he did not have disciplinary procedures in place. The claimant was initially employed as a receptionist but after three months she was assigned to the position of manager.

It was the responsibility of employees on the desk to take in money, four in total were employed at the reception desk. It was his responsibility to ensure that the respondent was paid. The claimant was well aware of long term guests. The claimant had booked in Mr. B and she did not tell him about the arrangement she had made with him. He did not have documentation to support the fact that the claimant booked in Mr. B. The claimant had ample opportunity to address him on this matter. He did not give the claimant a letter of dismissal. Mr. B had promised to give the claimant €500.00 and he stated that she deliberately did this.

In answer to questions from the Tribunal he stated that there were a huge number of cancellations and some staff did not realise what was happening. The respondent lost about €17,500.00. The respondent did not have many long term guests and employees had a duty to collect money.

Claimant’s Case

The claimant told the Tribunal she was employed in July 2008 by the respondent. On the 14th February 2011 she was told she was being dismissed. The director asked her if she was aware of a bill for a guest Mr. B and she was told it was her responsibility. She asked why it was her responsibility to pay Mr. B’s bill as other members of staff took in payments. The director told her that the guest Mr. B. made an arrangement with her. She did not take the bookings for all the guests. An employee on night duty booked in Mr. B. She never worked nights as she was at home with her child. She did not make an arrangement with Mr. B.

On the 12th February 2011 the director told her that she had made an arrangement with Mr.

B but she did not. The director told her to pay the bill or she would lose her job, she was not in a position to pay that money, she was earning €189.00 per week at this time. He told her she was dismissed from Friday 18th February but she did not work up until 18th February 2011. The director telephoned her on Tuesday and told her not to report for work.

It was not possible to undertake all the bookings on one shift; she took bookings by email and on the website. She did not change the code on the computer. She sent two e-mails to Ms CK, Head Office regarding the dismissal and she informed the claimant that it was none of her business and that she should talk to AK about it.

After she was dismissed she established her own holistic therapy company. A week before she lost her job she established this company. She earns approximately €200.00 to €250.00 per month.

In cross examination she agreed that the director spoke to her about the amount due. The guest Mr. B paid some money every week. She was under the impression that the respondent knew about this matter. She asked Mr. B if he had spoken to the respondent about the arrangement and he told her that he had. The director was not easy to talk to regarding matters in the hotel. She was aware that Mr. B. spoke to the director about an apartment. The director asked her in a harsh voice if she was going to pay the money and she was scared.

In answer to questions from the Tribunal she stated that the Mr. B's bill amounted to approximately €1,500.00 and not €2,000.00. She did not receive a response to her letter addressed to the respondent dated the 16th February 2011.

Determination

The Tribunal carefully considered all of the evidence adduced. It is satisfied that a dispute arose between the parties which resulted in the claimant's dismissal.

Having examined the disciplinary process engaged in by the respondent to address the dispute it is found and determined that there were present in it procedural defects. These included (a) a failure by the respondent to give the claimant an opportunity to properly engage in an investigatory process (b) a failure by the respondent to hold a proper disciplinary meeting with the claimant and (c) a failure by the respondent to inform the claimant of her right to appeal her dismissal.

The Tribunal finds and determines that these defects were of sufficient consequence to invalidate the process referred to and to therefore render the dismissal of the claimant unfair.

The steps taken by the claimant to mitigate her loss, which is continuing, were considered and it is found and determined that these were reasonable. The Tribunal finally considered the behaviour of the claimant in the discharge of her duties and finds and determines that this behaviour did not contribute to her dismissal.

The Tribunal awards the claimant compensation of €15,300.00 under the Unfair Dismissals Acts 1977 to 2007.

As the claimant's employment was terminated without notice she is entitled to two weeks gross pay in the amount of €378.00 (€189.00 per week) in lieu of notice under the

Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)