

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

,
-claimant

CASE NO.
UD2262/2010
MN2210/2010

against

EMPLOYER
-respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr D. Hegarty
Mr J. Flavin

heard this claim at Cork on 6th March 2012

Representation:

Claimant

Respondent:

Background:

The respondent company is a fast food restaurant which is a franchise of a well-known national and international brand name of fast food outlets. The claimant in his form T1A explained that he worked for the respondent for ten years. He was promoted to shift floor manager in 2004/2005. In January 2009 the claimant and associates opened a spice market and Halal grocery store in July of 2010 the claimant and associates opened an Indian themed take away. The claimant was dismissed from the respondent in or around 26th August 2010.

Respondent's case:

The Tribunal heard evidence from a director (also known as JB) of the respondent company. The respondent company is a fast food restaurant which is a franchise of a well-known national and international brand name of fast food outlets. The witness explains that he has two franchised restaurants in Cork.

The employees receive induction training and terms and conditions of employment. There is on-going health and safety training. The claimant was a shift manager and the claimant conducted training sessions.

The witness heard rumours that the claimant was involved in another restaurant (also known as R2) in Cork city. The claimant told him that he was just helping a friend out with that restaurant. The claimant said he was just advising his friend regarding opening hours and equipment etc.

A contract clause was opened to the Tribunal and the witness explained that they were concerned of breaches of the Organisation of Working Time Act, Health and Safety protocol and confidentiality breaches. If the claimant arrived in to work tired he could be a danger to himself and other employees and to customers. They were also concerned if the claimant was giving advice as to pricing. The other restaurant was also directly in the “footfall” path of the respondent restaurant. They also expected loyalty from their employees in return of their loyalty to them.

He spoke to the claimant but he was not forthcoming so he gave the claimant a letter. The letter dated 17th August 2010 was opened to the Tribunal:

“Following on from our recent conversation of Friday 13th August I would like you to give me written details of your employment in your own shop and in (R2). In your statement you should include the following:

- Details on the hours worked.
- Details on your involvement in both stores i.e. are you a partner /director/ owner advisor for each of the stores.
- Details of the products sold in both of the stores.

Can you please break your involvement down by each store so that I can give it further thought”.

The claimant did not respond to the letter of 17th August 2010 so he sent another letter dated 20th August 2010:

“Following on from our letter on the 18th August (sic) and our conversation of 19th August I am now writing to you to request written details of your employment in your own shop and in (named) take away again.

Given the potential health and safety and conflict of interest concerned, we require this information is to be broken down by each store and provided to me by 17:00 on Monday 23rd August 2010. In your statement you should include the following:

- Details on the hours worked.
- Details on your involvement in both stores i.e. are you a partner /director/ owner advisor for each of the stores.
- Details of the products sold in both of the stores.

Our policies and procedures and your contract state the following:

Breach in any respect of the confidentiality of the Company’s relationship whether with you, its suppliers or customers.

.....
.....

Failure to provide me with a written statement of your involvement by the above deadline may result in disciplinary action being taken up to and including dismissal.”

The claimant was invited to a *disciplinary interview* by letter dated 23rd August 2010. The meeting to take place on 25th August 2010.

Following the disciplinary interview the claimant was invited to a *disciplinary hearing* by letter dated 25th August 2010. The meeting to take place on 26th August 2010.

The witness explained that they decided to dismiss the claimant. They gave the claimant a right to appeal the dismissal. The claimant did not appeal the dismissal.

In cross-examination the witness was asked if the decision to bring the claimant to a disciplinary hearing was made during the first disciplinary interview. The witness said it was because the claimant was not forthcoming at the interview. The witness was asked how and when the situation was investigated and he replied that the claimant told them that he was only advising a friend and they put it to the claimant that he was doing more than just advising. He was asked where they investigated the matter and where is the result of the investigation and he answered that the claimant agreed that the restaurant sold burgers and coke and coffee.

Claimant's case:

The Tribunal heard evidence from the claimant. He outlined his work history. He was never late. Regarding the spice market, JB had called to see the hop and JB advised them to put cameras in place. He did not work in the market nor did he take a wage. He was a "kind of partner". He was not involved in the other restaurant as he was helping a friend.

JB was angry with him and tried to find out his involvement with the other businesses and he told JB that he had to believe him. The restaurant had not opened at the time he was dismissed; the restaurant opened a month after he was dismissed.

He was not warned that he could be dismissed nor what he was doing was wrong. He did not understand a breach of confidentiality. He did not disclose information or trade secrets. He was not questioned by the respondent regarding trade secrets. The respondent never told him that he would not be dismissed if he stopped helping his friends (stopped his involvement in other matters).

In cross-examination the claimant was asked why he had not been more co-operative. The claimant replied that that he told JB that the restaurant was not his and JB did not believe him. He told JB that he was not involved in the other restaurant. The claimant re-iterated that the restaurant was not open when the respondent dismissed him.

Determination:

The Tribunal unanimously determines the claimant was unfairly dismissed because the claimant was unduly and hastily dismissed. The claim under the Unfair Dismissals Acts, 1977 To 2007, succeeds. The Tribunal consider compensation as to be the most appropriate remedy and awards the claimant the sum of €5,000.00, as compensation, having regard to all the circumstances.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, succeeds and the Tribunal awards the claimant the sum of €1,881.24 under that Act.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

