

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE (*appellant*)

UD2089/2010

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

EMPLOYER (*respondent*)

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr. D. Morrison
Mr M. McGarry

heard this appeal at Castlebar on 18th April 2012

Representation:

Appellant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an employee appeal of a Rights Commissioner recommendation under the Unfair Dismissals Acts, 1997 to 2007, reference r-084074-ud-09/SR.

Background

The appellant worked as a hotel receptionist with the respondent from 28th August 2006 until 13th July 2009. The appellant was submitting that she had been unfairly dismissed by the respondent and the respondent was denying the claim.

Both parties made detailed submissions to the Tribunal.

Respondent's Case

Giving evidence, MMcK, Senior Assistant Manager with HR duties stated that the appellant worked as a receptionist with the respondent. From 2008 onwards issues arose with the appellant such as, changing rosters, not clocking out for breaks, not passing messages on, use of

a personal notebook, enquiry diary not used, mistake with vouchers. She said there were numerous issues. The appellant was dismissed because of a sequence of events but namely because of the recording of information in a personal notebook. She was given a written warning on 8th May 2008. Subsequent to the written warning there were two customer complaints in relation to the appellant. An issue arose on 28th July 2008 in relation to the claimant changing the roster without permission.

At an annual performance review on 2nd March 2009, the issue of the appellant using a personal notebook to record customers' details was raised. The appellant agreed to cease this practice and comply with hotel policy. A disciplinary meeting was held on 18th March 2009 in relation to the appellant's non-appearance at work, followed by a final written warning stating that any further issues with the appellant's performance would put her employment at risk.

A further disciplinary meeting was held on 2nd April 2009 to discuss a complaint from a staff member and deposits not entered correctly. In order to improve the appellant's standard of work, a counselling session was arranged. This was held on 17th April 2009.

Other issues arose regarding provisional bookings and a disciplinary meeting was held on 1st May 2009. This was followed by a letter on 5th May 2009 in which the appellant was afforded a final opportunity to secure her employment with the hotel.

On 25th June 2009 a further meeting was held to discuss problems which had arisen with Reception that morning. A verbal warning was issued to the appellant.

On 15th July 2009, the respondent wrote to the appellant informing her that a disciplinary meeting would be held regarding clocking out for breaks and altering rosters without permission. The disciplinary meeting was held on 20th July 2009 and dealt with a number of issues but in particular the fact that the appellant was still using a personal notebook to record customer data.

A dismissal letter was issued to the appellant on 21st July 2009. A letter dated 24th July 2009 was received by the respondent appealing the decision. The appeal was carried out by an external consultant and the dismissal was found to be justified.

The respondent submitted details of a number of customer records in the appellant's personal notebook.

In cross-examination, M McK explained that the disciplinary rules were in three stages - minor, major and gross misconduct. The letter of 8th May 2008 related to the major stage, although it did not state that in the letter. The disciplinary procedures are stated in the appellant's contract. The letter of the 8th May was headed "Notice of written warning". The issue of the notebook was covered in the letter of 16th July 2009 under "work practices". M McK did not know the extent of the numbers recorded in the personal notebook until after the appeal. The appellant had agreed to use the diary/computer.

There was no appeal hearing in relation to the letter of 18th March 2009, as the appellant was given the benefit and the warning was not held by the respondent. The letter of 21st July 2009 was the final stage. The appellant was suspended with pay in order to investigate work practices. The clocking out issue was discussed with the appellant three to four weeks before the final disciplinary hearing. This was not a new work practice. M Mc K signed most of the

warnings and attended the appeal meeting.

In reply to the Tribunal, M Mc K stated that the issue of the notebook arose in March 2009. The enquiry diary was used for enquiries and customer credit card details were input into the computer. All other options were explored, but the appellant did not want to work in the spa area and she was also asked about office work. A counselling meeting was held in April 2009. The meeting of 2nd April 2009 arose because of a customer complaint and a complaint from a member of staff.

Appellant's Case

The appellant said she worked for the respondent company as a full time receptionist and reported to M McK, Senior Assistant Manager. It was a very busy and understaffed position. The procedures and warnings were very confusing and not clear to the appellant. A lot of meetings took place and the difference between major and minor offences was also not clear. Procedures were very hap hazard.

The various meetings were to take away from the big issue, which was a problem with another staff member (R) who had raised his fists to the appellant. The respondent had done nothing about this. After R was promoted he became the appellant's boss. He told the appellant "if you were a fella I'd love to punch you". The Gardai were called and R was given a warning. They were both on the same shift and R was there six years before the appellant. The meetings held were petty and the appellant lost respect for the Managers.

She said she clocked in and out after being told to do so. In relation to the rosters, the claimant wanted to leave half an hour early one day. There was no Manager on duty. She made the time up but accepted it was not right.

The appellant purchased a notebook, as every time she started her shift there was papers everywhere at reception. She used her notebook for bookings and entered them into the computer when she got time. She would then scribble out the details, especially credit card details. The claimant has not been able to obtain work since her employment ended.

In cross examination, the appellant stated that the notebook was her own notebook .The information was safe in her handbag. She knew it was sensitive information and scribbled it out. The original notebook was shown to the claimant and she confirmed she could read an odd few details. She had said she would use the enquiry book but found it was easier to use the notebook, so she continued. Management were aware of the problem between the appellant and R, as she wrote three letters about it. She handed back the notebook at the appeal meeting.

In reply to the Tribunal, the claimant said she signed receipt of her warnings.

Determination

Having heard and considered the evidence adduced on behalf of both parties, the Tribunal finds in favour of the appellant. While the Tribunal accepts that the respondent had legitimate concerns in relation to the appellant's personal notebook and furthermore, that the respondent at all times acted in a bone fide manner in invoking the disciplinary procedure, the procedure itself was not applied properly and there was confusion in relation to the different classification of

offences. In the circumstances and on the grounds of the inadequacies identified in the disciplinary procedure, the Tribunal holds that the appellant was unfairly dismissed and awards her the sum of €12,000.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)