

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - *claimant*

CASE NO.
UD1361/2011
RP1820/2011
MN1458/2011
WT546/2011

Against

EMPLOYER - *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr. P. Casey
Mr D. McEvoy

heard this claim at Cork on 24 January 2013

Representation:

Claimant(s) :

Ms. Laetitia M Baker, MacCarthy Baker & C0, Solicitors,
64 North Street, Skibbereen, Co Cork

Respondent(s) :

Mr. John McCarthy, McCarthy & Co., Solicitors, 10 Ashe
Street, Clonakilty, Co. Cork

The determination of the Tribunal was as follows:-

At the commencement of the hearing claims under the Redundancy Payments Acts, 1967 to 2007 and Organisation of Working Time Act, 1997 were withdrawn by the claimant.

Respondent's Case

The respondent operates a small hotel which is family run. The first witness KO'D an employee of the respondent outlined details of an incident which took place on the 9 February 2011. On returning from her lunch break and while putting her personal belongings away she heard shouting directed at her. The claimant was shouting about a tip, she had her hands raised and was verbally assaulting the witness. The witness felt intimidated and her exit was blocked. She left the area and entered the kitchen where she was followed by the claimant. The claimant threw a €5 note on to the kitchen work area. The witness said she knew nothing about the tip and if she said anything to cause upset she would have apologised to the claimant but she believed she had done no wrong in this instance. The manager later questioned what had happened and suggested they all make up but KO'D felt she could no longer work with the claimant.

Two other witnesses MO'C and AB were working at the time of the incident. MO'C said she saw the claimant waving her finger at KO'D. She did not know what was going on and did not wish to get involved and carried on with her work. She recalled customers observing the incident and was aware customers heard the shouting. KO'D was crying and was very upset. AB was in the kitchen when KO'D and the claimant walked in arguing about a €50 tip which a customer had given to the claimant. Both witnesses indicated they had no difficulty working with the claimant prior to the incident or following the incident.

TO'D the manager on duty on the day of the incident was made aware of the argument between KO'D and the claimant by customers who witnessed the incident. By the time he acted the claimant had gone home having completed her shift. He got a verbal account of the incident from KO'D, MO'C and AB that day. KO'D was upset and she told him she felt bullied by the claimant. That evening he telephoned the claimant asking her to meet with him the following day. On the 10 February 2011 before the claimant commenced her shift he and DO'D (Director) met her in the hope that she would apologise and everyone would make up. The claimant told him she had done nothing wrong and would not be apologising. He felt a duty of care to his employees and could not let the claimant return to work. He could not recall writing or handing the claimant a letter terminating her employment at that meeting.

DO'D director and manager with responsibility for hiring staff and dealing with disciplinary matters first heard of the incident from TO'D. She also spoke with witnesses before attending the meeting on the 10 February 2011 with the claimant. At the meeting the claimant gave her account of what happened and refused to apologise to the other employees. As a result of refusing to apologise she told the claimant she could not return to work. Having sought advice from the company accountant she took the decision to dismiss the claimant and dictated the letter of dismissal. The letter of dismissal was posted that day. She could not tolerate such behaviour by any employee in the workplace.

Claimant's Case

The claimant (PM) received a tip of €50 from a guest of the hotel in January 2011. The employer had no policy on how tips were distributed. PM divided the tip giving the kitchen €25 and the restaurant €25. She had heard talk of KO'D having a problem with the way

the tip was distributed and approached her on the 9 February 2011 at the end of her shift. She attempted to explain to KO'D that the kitchen should have split the tip with her as she was working in the kitchen that week. She was pointing at the calendar in the small room where the argument took place but at no time physically threatened KO'D. She did not purposely block the exit of KO'D. She accepts there were raised voices and that KO'D was upset and went to the kitchen area. She left work shortly after the incident and said good bye to KO'D when she was leaving.

Later that evening she received a telephone call from TO'D informing her that her colleagues had made a number of allegations concerning her behaviour that day. She offered to go there immediately in order to resolve the matter but was instead invited to attend a meeting with him the following day. On the 10 February in her uniform she attended for work. She went to meet TO'D in the conference room. DO'D was there and reminded TO'D to take papers with him to the meeting. During the course of that meeting she offered to go and meet KO'D and the other staff but was told tensions were high and they could not allow her return to work. DO'D indicated to TO'D to give her a letter which was her dismissal letter.

Determination

Having deliberated over all the evidence carefully it is clear that the claimant's behaviour fell far short of acceptable standards in her dealings with her fellow employees, not to mention paying customers and the respondent's guests. The Tribunal also finds as a matter of fact that the claimant knew or ought to have known that she herself largely contributed to the situation which arose. Notwithstanding same the Tribunal finds that the dismissal letter [whether handed or posted to the claimant] was inappropriate. The respondent's reaction was disproportionate and no other options were apparently explored or considered. In all the circumstances the situation was handled poorly and therefore the Tribunal find the claimant was unfairly dismissed. The Tribunal award the claimant €2000 under the Unfair Dismissals Act, 1977 to 2007 and award her €1288 in lieu of four weeks minimum 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)