

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE (*claimant*)

CASE NO.
UD1740/2011

RP2293/2011

MN1799/2011

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr. L. Tobin
Ms M. Maher

heard this claim at Dublin on 27th February 2013

Representation:

Claimant(s) :

Respondent(s) :

The determination of the Tribunal was as follows:

At the outset, the claims under the Redundancy Payments Acts and Minimum Notice and Terms of Employment Acts were withdrawn.

The Tribunal has carefully considered the evidence adduced. The respondent company (a public house) is in voluntary liquidation and nobody appeared for and on behalf of the liquidator.

The claimant gave clear evidence of an incident which ultimately gave rise to his dismissal. The claimant had been employed by the respondent company for 11 years as a barman. The claimant's employment history was unremarkable and the claimant had been working 39 hours per week over the course of five shifts.

The claimant said there was a history by the employer of not making the appropriate pension contributions and this matter had been raised with the Irish Vintners Association and was an on-going issue.

The claimant was shown CCTV footage in June of 2011, which purported to show a night some two weeks previously when the claimant was on the premises and working a shift.

At some point in the course of the evening, the claimant had taken a euro note (€10) and placed it in his top pocket with a view to ringing the order already given to the customer into the till when he got around to it.

Unfortunately the claimant never did ring in the order and the respondent read this series of actions as a wilful wrongdoing.

Having considered the evidence adduced and assessed the demeanour of the claimant, the Tribunal is absolutely satisfied that the claimant is not guilty of a wilful wrongdoing. At most the claimant was momentarily careless.

The reaction of the respondent was wholly disproportionate and where the sanction was so onerous there was a duty on the respondent to ensure its investigation and response was reasonable in all the circumstances. The Tribunal finds that was not the case.

In all the circumstances the claimant succeeds under the Unfair Dismissals Act and the Tribunal awards the sum of €11,000.00. The Tribunal notes the claimant went on to do a course in September 2011.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)