EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:	CASE NO.
EMPLOYEE – *claimant*	UD2194/2011
	RP2811/2011
	MN2236/2011
Against	WT904/2011

EMPLOYER– ***respondent***

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. R. Prole
Mr J. Jordan

heard this claim at Dublin on 26th February 2013

Representation:

Claimant(s):

Respondent(s):

The determination of the Tribunal was as follows:-

Determination:

The claims under the Redundancy Payments Acts, 1967 to 2007, and the Organisation of Working Time Act, 1997, were withdrawn at the outset of the hearing.

The respondent conceded the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. Accordingly, the Tribunal awards the claimant €2339.94 being six weeks' pay.

The claimant commenced work at the respondent's five star hotel as a doorman on the 1st November, 2000. The respondent gave evidence of the very thorough and comprehensive training the claimant did before he commenced his employment. They also stated that training was on-going and the staff, including the claimant, regularly did refresher type training. They

put emphasis on the importance of customer service and how critical it was to make each and every guest feel special from the moment they arrived at the hotel. The claimant, as the doorman was the person who was normally responsible for creating the guest's first impressionof the hotel.

Evidence was given that the claimant did have some minor disciplinary issues over his eleven years as doorman. They were not put in issue and were not taken into account when the respondent made its decision to dismiss the claimant.

On the 30th November, 2010 it was alleged that the claimant was discourteous to a guest and that he used inappropriate physical or verbal behaviour towards another guest. He was invited to an investigative meeting on the 10th December, 2010 to discuss "1. *Alleged discourtesy to a guest. 2. Alleged inappropriate verbal or physical behaviour with a guest or employee*." Following that, there was a disciplinary hearing. The letter of invitation to that meeting does not state when it was to be heard. The meeting took place on the 21st December. Following that, the claimant received his first written warning on the 21st December, 2010. The Tribunal note that the letter setting out the alleged misconduct does not disclose any details in relation to the specifics of the occurrence. It is not clear from that letter whether the complaints arise out of thesame incident or separate ones. It wasn't until the meeting on the 10 th that the letter ofcomplaint was given to the claimant. That was only in relation to the first allegation. He shouldhave been given an opportunity to read the complaint prior to the meeting. Furthermore, therewas no evidence before the tribunal that anyone from the respondent company investigated thecomplaint to confirm its validity. No evidence was adduced by the respondent in relation to theJK allegation. The claimant did not appeal that written warning.

On the 24th March, 2011 the claimant was invited to an investigative meeting on the 30th March, 2011 to discuss "1. *Alleged discourtesy to a guest. 2. Alleged inappropriate verbal and physical behaviour with a guest. Parking arrangements for guests of the hotel on both 10th February and the 19th March".* Following that meeting, on the 1st April he was invited to a disciplinary meeting on the 6th April, 2011. He received a final written warning on the 6th April, 2011. The Tribunal note again that the claimant was not given the specifics of each of these incidents prior to the meeting. The letters of complaint, if there were any, were not opened to the tribunal. There was no evidence before the tribunal that anyone from the respondent company investigated these complaints to confirm their validity. The claimant did not appeal that final written warning.

On the 7th August, 2011 the claimant was invited to an investigative meeting on the 19th August, 2011 to discuss " 1. *Alleged discourtesy to a guest on 30th June, 2011 and the 29th July, 2011. 2. Alleged inappropriate verbal or physical behaviour towards a guest."* The meetingactually took place on the 12th August, 2011. Following that meeting he was invited to adisciplinary meeting to take place on the 16th August, 2011. He was dismissed by letter datedthe 17th August, 2011. There was no evidence before the tribunal that anyone from therespondent company investigated the complaints to confirm its validity. It was particularlyimportant in this instance, as the letter of complaint stated that the

claimant disclosedinformation in relation to room rates paid by a guest. The claimant did not have access to thisinformation and that was conceded by the respondent. The respondent also conceded that it didnot entertain the possibility that there could have been an ulterior motive behind the complaint.

The claimant exercised his right to appeal the decision to dismiss him. KW heard the appeal. He stated in evidence that he read the investigative notes and the disciplinary notes. No evidence was adduced that KW interviewed anyone in relation to the complaints or that he carried out any independent review of the situation. He stated in evidence that his role was to establish that the procedure was fair and whether or not there was any new information/facts. He did not address the complaints themselves nor did he allow the claimant to do so. His decision not to overturn the dismissal was solely based on the fact that there was no evidence.

The claimant stated in evidence, and it was not challenged by the respondent, that he requested the respondent give him some help or guidance in relation to the parking issue, specifically how to turn guest away at the gate. He did not receive any help or guidance in relation to that specific matter. That is important in light of the fact that all of the complaints made against the claimant were in relation to parking.

The Tribunal find that no proper investigation was carried out in relation to any of allegations. That in itself is not necessarily fatal. However, the way in which the appeal hearing was conducted was by far the most serious of the respondent's failings. The purpose of an appeal hearing is not solely to establish if there are any new facts. The appeals officer must also address his mind as to whether or not the decision to dismiss was sound. In doing so he must take the company procedures and all of the factual circumstances into account. If he has any doubts in relation to any of the above it is incumbent upon to investigate the matter. It is clear from KW's evidence that the appeal was limited to whether or not new evidence/information existed. That is unfair.

The Tribunal find in favour of the claimant. The claim under the Unfair Dismissals Act 1977 to 2007 succeeds. The Tribunal award reengagement. The reengagement is to take affect from the 1st May, 2013. There is to be no interference with the claimant's continuity of service. There is to be no interference with the claimant's pension contributions.

Sealed with the Seal of the

Employment Appeals Tribunal

This ________________________

(Sgd.) ________________________
(CHAIRMAN)