

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1115/2011
MN1206/2011

against

Shawcove Limited
EMPLOYER
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 J. O'Connor

Members: Mr G. Andrews
Mr D. McEvoy

heard this claim at Tralee on 16th January and 22nd April 2013

Representation:

Claimant:

Respondent :

The determination of the Tribunal was as follows:

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn at the outset of this hearing.

Claimant's Case

Prior to commencing employment with respondent in March 2001 the claimant had several years experience in the hospitality business at upmarket hotels in south east Asia. By December 2010 the claimant was in charge of the restaurant business located at a four star hotel in the centre of a large town in the south west of the country. She confirmed her awareness and familiarity with her roles and responsibilities for her position within that hotel. On occasions she worked up to sixty hours per week.

On 18 December 2010 the claimant was given very short notice and with no explanation to attend a meeting on that day. There she met a human resource manager, someone from the accounts department, and another person. That other person proceeded to present to the claimant certain video footage on a laptop that related to movements in the hotel some two months earlier. It was indicated to the claimant that she was somewhat involved in a scenario where a sum of money has not been accounted for. Instant answers were wanted by this person and since the claimant was unable to provide that she told the trio that she could not at that moment remember the scene as

shown. In reply she was told that this answer was not good enough. That person and the human resource manager then left the room.

When they returned a few minutes later further video footage from the hotel was presented to her from the previous October that again related to monetary transactions she was apparently engaged in. The claimant told the Tribunal that since she dealt with countless issues in her role as an employee she could not always be precise as to the details of those transactions. This witness told her questioners that again she could not readily recall the scenario as presented to her. The response from the respondent's side was similar to its original reply. The claimant who is a foreign national and who had no support at his meeting became nervous and found this situation upsetting.

The situation further deteriorated when her resignation was sought. When she refused to accede to that demand she was then threatened with dismissal. Due to her residency and employment status she did not know what to do. It was indicated to her that should she be dismissed it would be very difficult for her to get another job. The claimant was fearful and "totally lost" in facing this situation. Upon returning a second time from a short break the other person sought her reaction. The claimant opted to take the resignation route. A three-line note was presented to the Tribunal which was labelled a letter of resignation. That note was witnessed by the human resource manager.

Respondent's Case

The respondent presented an audit report relating to some transactions on their premises on 12 and 24 October 2010. Many of those transactions listed the claimant's involvement. She was also responsible for the receipts and how they were received and recorded at the hotel reception. The board of management asked the financial controller to investigate discrepancies linked to those transactions. That controller detailed to the Tribunal on the nature and status of the above transactions.

Together with the human resource manager and an outside security consultant this witness attended a meeting with the claimant on 18 December 2010. The financial controller labelled this gathering as an investigation meeting. The purpose of that meeting was to seek the assistance of the claimant in explaining and clarifying those discrepancies. Video images from close circuit television (cctv) relating to those unresolved discrepancies were shown to her. However, no such footage was available from the reception area. She was unable to help them with their enquiries. During the course of that meeting this witness was left alone in the room with the claimant. Apart from one comment this pair sat in silence until the human resource manager and security consultant returned.

According to this witness that when those two re-entered the room the claimant then told them of her wish to resign. He added that there was no pressure on her to do that and that no threats or references to the Gardai were made. The financial controller also stated that the claimant had not been offered any form of representation and/or witness for this meeting.

The group human resource manager described the meeting she attended with the claimant and others as informal. Its purpose was to establish whether there was a need to investigate discrepancies apparently involving the claimant. Upon questioning and the screening of cctv the claimant said she could not explain or remember those transactions which occurred two months earlier. This witness and the security consultant vacated the room and discussed the case with a view to investigating the matter. According to the human resource manager such an investigation was not necessary as when she and her colleague returned the claimant announced her resignation.

The witness then accepted the claimant's written resignation which was to come into immediate effect. In doing so she then felt that this issue was now at an end and there was no further action taken regarding the claimant and her possible involvement in financial discrepancies. This witness was satisfied that there was something amiss with the voided items associated with claimant on those dates in October.

The human resource manager told the Tribunal that there was no expectation that the claimant would resign. No allegations had been put to the claimant about her involvement in those discrepancies and no threats had been made to her regarding her employment with respondent.

Determination

There was a clear conflict of evidence between the parties in this case particularly regarding the meeting of 18 December 2010. However, it was common case that at the conclusion of that meeting that the claimant's employment ceased with the respondent.

Having heard and considered the adduced evidence the Tribunal concludes that this meeting amounted to an investigation hearing. That being the case its procedure was flawed, not least in the fact that the claimant was not invited to have representation and/or a witness. She was also not informed beforehand of the nature and circumstances of that meeting. The Tribunal also notes that the respondent was too quick and too eager to accept the claimant's resignation.

The Tribunal does not accept that this resignation was voluntary and does not treat that resignation as a sign of any wrongdoing on her part. The decision not to present the security consultant as a witness was not without significance. In treating this matter as closed due to that resignation the respondent showed an unprofessional if not a lax attitude towards this case.

The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the claimant is awarded € 24,000.00 as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

