

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *claimant*

UD171/2010

against

EMPLOYER – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Browne  
Mr. A. Butler

heard this claim in Wexford on 28<sup>th</sup> July 2011

Representation:

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Claimant: Mr. Anthony H Ensor, Ensor O'Connor, Solicitors, 4 Court  
Square, Enniscorthy, Co Wexford

Respondent: Mr. Sean Lowney, Doyle Lowney And Co. Solicitors, Westgate,  
Wexford

The determination of the Tribunal was as follows:-

#### **Respondent's Case**

TK the manager told the Tribunal that GL took over the running of the hotel in 2008. The hotel closed in January, February and March 2009. When it reopened, all staff were re-employed and the claimant was employed as night porter from 11p.m. until 8a.m. Monday to Thursday four nights a week. Her duties included late check in, early check out of customers using the early morning ferry, residents bar duties, cleaning and general duties. A handover list was given to her of duties to complete while on duty.

While on early morning check out, the claimant failed to take a number of payments from customers and the respondent was at a loss because of this.

On one occasion a guest came to the reception and told the claimant to charge his room to his credit card and left. The claimant failed to notice that there was no credit card details for the guest on the system.

On the 9<sup>th</sup> May 2009, the claimant was given a verbal warning. The claimant was given a written warning on the 3<sup>rd</sup> July, which she took home and asked to be amended. It was explained to her that the written warning would remain on her file for one year.

On 8 July at 11.20 pm the claimant failed to report for work. She telephoned her and it appeared that she had woken the claimant up. The claimant reported for work at 12.00a.m. The claimant filled in the roster the next morning that she had reported for work at 11p.m.

The claimant wore runners to work and told her that she had a medical issue. TK asked the claimant for a doctor's note but she did not provide one. The claimant did not wear a name badge on a number of occasions.

On Sunday 19<sup>th</sup> July, she telephoned the claimant in relation to the time she reported for work and a bill. She told the claimant she was suspended until she could meet the manager.

On the 26<sup>th</sup> July a letter issued from GL to the claimant. A meeting was arranged which was attended by GL, the claimant and a friend of the claimant. The claimant did not seem to care about the hotel and for this reason she was dismissed. GL asked the claimant if she understood the position and she did not respond.

In cross-examination she stated that the claimant had put the respondent in a difficult position, it had no choice to but suspend her. The claimant had a contract of employment with the previous employer. The claimant showed no remorse at the meeting. The claimant was dismissed at the meeting. The claimant did not tell her that she was ill.

In re-examination she stated that the respondent had hoped the claimant would change her attitude and keep her on. The claimant had worn runners to work previously. The witness took over as manager on 9<sup>th</sup> March 2009. Team meetings were held and GL asked staff what they wanted.

GL told the Tribunal that the hotel was part of a group. He usually took holidays in July but he wanted to sort this matter out. When the respondent took over the hotel in November 2008, it spent money on refurbishment. The bedrooms were closed, he knew the claimant. He had managed the hotel in 1999 and he thought that he had hired her as a wash up at that time.

The claimant did not charge for drinks and was not doing her duties. He was disappointed for the claimant that she did not want to improve. In any hotel if you let a guest walk out three times without paying you would be dismissed.

In cross-examination he stated that suspension was his decision. He felt the one thing he did incorrectly was suspend her without pay. The claimant signed the written warning. Employees had contracts of employment. He told the claimant he was going to have to let her go and he asked her if she had any questions to ask him.

## **Claimant's Case**

The claimant told the Tribunal that she commenced working with the respondent in March 2001 in the bar. She became a night porter in 2005. Her normal hours were 11pm until 8am Wednesday, Thursday, Friday and Saturday. There was an amount of €94.00 outstanding on one room and that guest got away.

When a resident bought a drink in the bar they signed a docket and those dockets were left for her to add to room charges. On one occasion the dockets were put under the mouse mat and she did not notice them.

A guest had made a telephone call and he queried his bill. The guest argued that he would not pay and left. She had his address and credit card details and gave those to the reception manager.

She was due to work at 11pm but felt sick. She thought if she went to bed for a few hours she would feel better but fell into a deep sleep. When she received the phone call from TK she went into work sick.

She had a few missed calls on her telephone. She telephoned the hotel and spoke with the manager. The manager told her she was suspended for two weeks until GL returned. She was not given a reason.

She went to the meeting hoping that matters could be resolved. She knew what was going to happen. GL told her there were two things they could do, he knew one and he asked her what the other one was and she did not respond. She was very upset. She was surprised she was dismissed, as she loved working in the hotel.

She had worn black runners with white soles and there was not a problem. During quiet times the receptionist would not report for work until 10am. She did not receive anything from her employer after the meeting. Other than these two issues she never had a problem.

In cross-examination she stated she should have telephoned the respondent but she fell into a deep sleep. She apologised throughout the meeting for what she had done.

During the summer she undertook security work and she was on leave. She worked in the bar and did the cash. A nightclub opened nearby and she obtained ten hours work for two nights. She applied for other jobs.

In answer to questions from the Tribunal she stated she signed in for 11 p.m. because she was owed hours from the respondent. Her attitude was that she was upset but did not use bad language. She knew the procedure and she admitted she made mistakes. The person dealing with the check in would take the credit card details. She did not check anyone in.

MK told the Tribunal she was a friend of the claimant and worked with her. She attended the meeting. GL sat across from the claimant and she sat across from TK.

GL had notes in front of him, he asked a question and when the claimant answered he looked out the window or looked TK. When he asked the question she was taken aback. The claimant was never shy of work.

## **Determination**

The respondent employer was unable to produce the codes of practice referred to in the claimant's contract of employment so that the disciplinary procedures referable to the claimant's employment were not available for review by the Tribunal.

Therefore, in considering this claim, the Tribunal has considered the principles and procedures that could reasonably be expected to apply to the claimant's employment and, having considered and applied same, is of the opinion that the respondent employer fell short in meeting its obligation to act fairly in its dealings with the claimant.

Specifically, the claimant was suspended without pay in advance of the meeting of the 31<sup>st</sup> July in circumstances where the Tribunal is of the view that the suspension itself constituted a sanction against the claimant. The Tribunal feels that, in so acting, the respondent employer did not comply with principles of natural justice before arriving at the decision to suspend.

The parties to the meeting of the 31<sup>st</sup> July had different perspectives on their respective attitudes at that meeting. The respondent employer's witnesses were clear in their evidence that it was their perception of the claimant's attitude at the meeting of the 31<sup>st</sup> July that led to her dismissal and not what went before. The claimant and her witness both gave evidence to the Tribunal of their belief that the decision to dismiss had already been made before the meeting and that the responses and explanations from the claimant at the meeting were not given any consideration.

Considering all factors, the Tribunal is of the opinion that the entire process was rushed, that the claimant was not given sufficient time to consider her position and show improvement, that the respondent employer itself should have taken more time in arriving at a considered decision, that the decision itself was harsh and difficult to justify and that a reasonable employer would not have decided to dismiss but would have considered the full range of sanctions available and potential benefits of remedial training for the claimant.

Generally a disciplinary procedure would be expected to include a right of appeal within the workplace, an option which was not given to the claimant on this occasion.

The Tribunal finds that the claimant was unfairly dismissed and awards her compensation in the sum of €17,500.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)