

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *claimant*

CASE NO.
RP2301/2011

UD1763/2011
MN1812/2011

against

EMPLOYER - *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.
Members: Mr D. Moore
Mr J. Flannery

heard this claim at Tullamore on 2nd April 2013

Representation:

Claimant(s) : In person

Respondent(s) : Director of respondent company

Summary of Evidence

The respondent company traded as a fast food store known as Abrakebabra and the claimant was employed as a supervisor in the store from 2006. (F) for the respondent company gave evidence that the claimant was given a number of verbal warnings and in April 2010 received a final written warning for breaches of company rules. In April 2011 (F) viewed CCTV footage showing the claimant consuming food on the premises without any record of the food being purchased. On checking further CCTV footage he discovered two or three similar instances. He called the claimant to a meeting in or around 24 February 2011 and showed the CCTV footage to him. The claimant told him that he had forgot to pay for the food and attempted to pay for it on the following day. (F) told the Tribunal that this was not acceptable and his trust in the claimant had been betrayed. He gave him one month's notice and dismissed the claimant with

effect from 25 March 2011.

He did not write to the claimant confirming his dismissal and did not offer the claimant an opportunity to appeal the dismissal. His word was final. He gave further evidence that he sold the business approximately three months later and existing staff were paid their redundancy and notice entitlements.

The claimant gave evidence that he worked for the respondent since March 2006. He worked 5/6 days per week and his shifts varied from 4 to 10 hours. He told the Tribunal that for the first four years of his employment staff were permitted to have a meal and beverage on the premises free of charge. This position changed in 2010 and staff were required to record their consumption on a record sheet and pay for it thereafter. He was called to meeting by (F) in or around 13 March 2011. He was not informed beforehand of the nature of this meeting. He was dismissed at the meeting for failure to pay for food that he had consumed. He told the Tribunal that he had recorded his food consumption on the record sheet in the usual manner and paid for it on the following day. He did not tell (F) that he had forgot to pay for the food and denied that he was shown CCTV footage of the incident. He confirmed that he had received a previous written warning in 2010 but denied that he had received any verbal warnings. He was dismissed from his employment with effect from 25 March 2011. He is currently unemployed and is seeking alternative employment.

Determination

The Tribunal, after the evidence of both parties finds that there was a direct conflict of evidence between the parties and very little documentary evidence was provided to the Tribunal. Based on the lack of proper procedures adopted by the respondent in terminating the claimant's employment the Tribunal finds that the claimant was unfairly dismissed. For instance no formal invitation to what amounted to a dismissal meeting was sent to the claimant, no investigation took place and no letter of dismissal issued to the claimant. The Tribunal also notes that no possibility of an appeal was offered to the claimant. In those circumstances the Tribunal finds that the dismissal amounted to an unfair dismissal within the meaning of the Unfair Dismissals Acts and awards compensation in the sum of €9,500.00 under the said Acts.

The Tribunal further determines that the claimant did not receive his full notice entitlement and awards him the sum of €300.00, this sum being the equivalent of one weeks' pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

The claim under the Redundancy Payments Acts 1967 to 2007 fails and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)