



EMPLOYMENT RIGHTS TRIBUNAL

Case: ERT/2014/060

Theresa Foster

CLAIMANT

AND

Sinclair Gittens T/A Blettens Restaurant

RESPONDENT

DATES: 10th February 2020

BEFORE: Christopher Blackman Esq, GCM; Q.C Chairman
Dr. Hartley Richards Member
Frederick Forde, Esq. Member

APPEARANCES: Theresa Foster, Claimant in Person
Sinclair Gittens, Respondent in Person

DECISION

1. Section 27 of the Employment Rights Act (the Act) provides that an employee has the right not to be unfairly dismissed by his employer. Section 29 (1) of the Act further provides that in determining whether the dismissal is fair or unfair, it is for the employer to show the reasonfor the dismissal. Section 29 (2) states that an employer shall have the right to dismiss an employee for a reason....if it (b) relates to the conduct of the employee.
2. However, Section 29 (5) (b) stipulates that an employer is not entitled to dismiss an employee for any reason related to the conduct of the employee without informing the employee of the accusation against him **and** (emphasis added) giving him an opportunity to state his case subject to the disciplinary procedures specified in the Fourth Schedule of the Act.
3. It is against the foregoing statutory background that the Tribunal has considered the issues in the claim for unfair dismissal by the claimant Theresa Foster against Sinclair Gittens trading as Blettens Restaurant.
4. The claimant was employed as a Food and Beverage Server on November 1, 2009 with the respondent until her dismissal on December 23, 2013, consequent to a dispute as to what change was due to a guest of the restaurant, for the purchase of a beer, on the preceding Friday night, December 20, 2013.
5. Mr. Gittens both in his written statement and evidence before the tribunal said that he considered the explanations received from Miss Foster conflicting and as a consequence decided to dismiss her. Mr. Foster confirmed that in the four years the claimant had worked with him, he had had no reason to question the claimant's honesty. Mr. Gittens also acknowledged that some while after Miss Foster's departure, a \$100.00 bill the disputed currency, was found on a cash register.

6. Miss Foster in her evidence before the tribunal said that when she tried to explain what appeared to be inconsistencies in her statement to Mr. Gittens, she was told that he did not want to hear her and to leave. She further noted that the \$100.00 bill which was found after her departure, supported her position that she had not been involved in inappropriate behaviour.
7. As noted in paragraph 2 above, before there is a dismissal by reason of conduct, the employee **must** be given the opportunity to state his or her case, and the employer should then initiate the procedures required under Part B of the Fourth Schedule. The three (3) steps required by Part B are:

Step 1: (a) That the employer set out in writing the alleged conduct of the employee the cause of concern and for which disciplinary action is being considered, and (b) send the statement to the employee and invite the employee and a friend to a meeting to discuss the matter.

Step 2: The meeting must take place before any disciplinary action is taken, and should be held within 7 working days of the statement being sent to the employee, with the employee having the right to have a friend or shop steward, if a member of a trade union, present during the proceedings. The employer must inform the employee in writing of the decision and must advise that the decision may be appealed, if the employee is not satisfied with it.

Step 3: Deals with the Appeal process where there has been a dismissal and an opportunity is provided for the decision to dismiss, to be reconsidered.

8. On his own admission, Mr. Gittens did not follow any the above steps. As a consequence the Tribunal has had little difficulty in holding Miss Foster's dismissal to be unfair. Employers are reminded that except in the case of gross misconduct, an employee should not be dismissed for his/her first breach of discipline, and that disciplinary action must be applied progressively in relation to a breach of discipline. Employers,

particularly small employers, are urged to seek guidance from employers' representatives before taking decisions in anger. There is an old saying that has relevance, notwithstanding its age: Haste makes waste.

THE AWARD

9. Other than outstanding holiday with pay amounts, no payments were made to Miss Foster at termination. Under section 22 of the Act, there is an entitlement to two weeks' notice as her employment had been for a period of less than 5 years. Based on her salary of **\$317.12**, the amount due under this head is **\$634.24**. The basic award provided for in the Fifth Schedule is for two and a half weeks' wages for each year of employment. The calculation is **$\$317.12 \times 2.5 \times 4 = \3171.20** .
10. Section 37 (1) (a) provides that where neither an order for the reinstatement of an employee nor for his re-engagement is made, the Tribunal shall make an award for compensation to be calculated in accordance with the Fifth Schedule to the Act. Accordingly, pursuant to s.37(2)(c)(ii) and in the exercise of our discretion, we order that the respondent pay the claimant 26 weeks wages, which amount to \$8,245.12.
11. The total amount due to the claimant is **\$12056.56 being \$634.24, \$3171.20 and \$8245.12.**
12. The Tribunal orders Mr. Sinclair Gittens to pay the sum of **\$12,050.56 in the following manner: (a) \$3,056.56 by March 31, 2020, (b) the balance of \$9000.00 in three (3) equal instalments on the last day of April, May and June 2020.**

Dated this 18th day of February, 2020.

Christopher Blackman
Chairman

Dr. Hartley Richards
Employer's Representative

Frederick Forde
Employee's Representative