



EMPLOYMENT TRIBUNALS

Claimant
S Larvin

Respondent
Rileys Sports Bar
(In Administration)

v

Heard at: Watford Employment Tribunal (by CVP)
Before: Employment Judge Anderson

On: 6 March 2023

Appearances

For the Claimant: In Person

For the Respondent: Did not attend.

JUDGMENT

1. The claimant's claim of unfair dismissal is upheld.
2. The respondent is ordered to pay the claimant £7875.00 in compensation within 28 days from the date of this order.

REASONS

1. The claimant was employed by the respondent, a sports bar, from 11 January 2002 until 8 August 2019 when she was dismissed for gross misconduct. The claimant filed a claim of unfair dismissal on 13 December 2019. The respondent filed a response stating that the claimant was fairly dismissed for conduct reasons on 11 March 2020. The respondent subsequently went into administration and has taken no further part in this litigation. On 15 February 2022 the administrator confirmed that it gave consent to the filing of the claim. The administrator has taken no other part in the proceedings.
2. No bundle or witness statements were filed ahead of the hearing. At the hearing, at my request, the claimant emailed to the tribunal some documents (a grievance, a grievance appeal letter and a disciplinary appeal letter). She said that she had not filed a schedule of loss.
3. The claimant gave evidence on oath. She said that she was dismissed because the sports bar was in decline (by which she meant that business was poor) and not for the reasons given by the respondent. She told me that the reason she was given for her dismissal was for drinking alcohol on duty.

4. The claimant said that a number of allegations had been made against her by her area manager which resulted in a disciplinary process being instigated. The outcome of the process was that of four allegations none were proven except that she had drunk alcohol on duty. She said that it was not uncommon to drink alcohol on duty and she had been encouraged by a previous area manager to have a drink with a customer where this was warranted in terms of gaining bookings and increasing business. The incident relied upon by the respondent as misconduct was such an incident.

Decision

5. Under s94 of the *Employment Rights Act 1996* (ERA) an employee has the right not to be unfairly dismissed by their employer. Where unfair dismissal is contested it is for an employer to show the reason for dismissal and that it is one that justifies dismissal (s98 ERA).
6. Under Rule 47 of the *ET (Constitution and Rules of Procedure) Regulations 2013 Schedule 1*, where a party fails to attend a hearing, the tribunal may dismiss the claim or proceed with the hearing in the absence of a party, having made enquires as to the reason for the absence of the party.
7. The respondent was absent as it is now in administration and the administrators did not wish to take part. For this reason I decided to proceed with hearing in the respondent's absence.
8. Having heard from the claimant, having no evidence from the respondent other than the assertions in the ET3, and noting that it is not the job of the tribunal to cross examine the claimant and take on the role of an adversary in this situation, I find that the claimant was unfairly dismissed for the reason that business was not good at the sports bar and not for the reason put forward by the respondent in the ET3, which was misconduct.

Remedy

9. The claimant had not filed a schedule of loss and did not set out a figure which she was claiming in compensation. She said that she did not have losses arising from the dismissal. I calculated the basic award on the basis of the figures provided in the ET1, which the respondent had, in the ET3, confirmed it agreed with. The basic award was the only award I made.

Employment Judge Anderson

Date: 6 March 2023

Sent to the parties on:

24 March 2023

For the Tribunal Office