

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
Employee

CASE NO.

RP387/2006  
MN508/2006

UD766/2006

against  
Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL  
Members: Mr G. Mc Auliffe  
Ms K. Garvey

heard this claim at Dublin on 21st February 2007

Representation:

Claimant: In person

Respondent: Mr Dominic Dowling, Dominic Dowling, Solicitors,  
37 Castle Street, Dalkey, Co. Dublin

The determination of the Tribunal was as follows:

Claimant's case:

The claimant was employed as a chef in the Respondent restaurant in Dublin city centre for five years. Sometime during late summer of 2005 he bought a houseboat that was located outside Dublin. He explained this to the head chef at the time and he explained the train times to him also. In asking the head chef if he could work morning shifts he was told by the then head chef that it would not be a problem. Prior to this he had worked a mixture of early and late shifts although predominantly his shifts were early shifts. Two chefs worked on the early shift. The claimant explained the work that he did and the different types of work that was involved to the Tribunal. In the latter part of 2005 a new head chef was appointed. The claimant explained the Christmas menu preparation requirements and that the new head chef approached him and another chef about the preparation of food. The head chef did not approach a third person about this. The third person was an extra person employed over the busy period.

The claimant also told how the early shifts were set for 9.00 am to 4.00 pm and he himself began working at 8.30 am and left at 3.45 pm in order to get his train. He often worked late and missed the early train but this was not a problem.

During the autumn of 2005 the restaurant opening hours changed, inasmuch it had closed between 4.00 pm and 6.00 pm and from autumn onwards it remained open. The new head chef approached him regarding the amount of food preparation. The head chef told him that he was not preparing all of the required food. The claimant asked the head chef to work with him on one of the early shifts so that he could see the situation for himself. The head chef would see that they were working to their utmost. The head chef did not do this, even though the head chef had worked with all of the other staff.

During the last few weeks of his employment in the restaurant he was asked to work the late shifts. He worked the first three shifts of one week and was out sick for two of the shifts. He worked the late shifts for a following two weeks. On the third week he explained to the head chef that he was only staying in Dublin overnight for two weeks. He asked to have a meeting and this did not happen. He had explained to the head chef that he was back living outside Dublin. The head chef told him that the only shifts that were available were late shifts. The next day he arrived to work and his name was crossed off the rota. He told the manageress the situation and that if he was not working the following week he would need a letter for the Department of Social and Family Affairs, (DSFA) because if he was not working he would need some income to cover his house boat loan. She told him that there were shifts for him. She told him that he was not fired and that there were shifts for him. The claimant further explained that on the third week he told the head chef that he could not work the late shifts he was to work the following week and the head chef refused to discuss the matter.

The claimant was asked what reason he was given that his name was crossed off the rota and he replied, "They gave me none at the time".

Respondent's case:

The Tribunal heard evidence from the head chef who told the Tribunal that the week in question he told the claimant that the only shifts that he had available for him were the late shifts. There was no discussion about this. The claimant told him that he could not work the late shifts and he told him that they were the only shifts that he had for him. He did not tell the claimant that he would be on late shifts for further weeks. There was no discussion because the claimant asked for a letter for the DSFA. He intended putting the claimant on a mixture of early and late shifts.

The witness was asked if he discussed the shift arrangement with the claimant. He explained that it was an agreement the claimant had with the previous head chef. It was put to him that it would have been obvious that the claimant worked early shifts, as he worked every morning. He replied, "Yes it's just that it was not discussed". The witness was asked if he was in charge of the rota before he was promoted to head chef and he agreed that he was. The witness denied that the claimant's name was removed from the rota. The witness was asked to clarify his evidence in that he would have eventually put the claimant on the early shift. He explained that he would have done that, "In a few weeks when he (the claimant) knew how (to prepare fully)". When asked if he discussed this with the claimant he replied, "No".

The Tribunal heard evidence from the manageress. She told the Tribunal that the claimant asked her for a letter for the DSFA, as he needed to get benefits if he was not working. She told him that

shifts were there for him. He told her that he could not do those shifts and she wrote a letter to say that there were no early shifts available

**Determination:**

The claim under the Unfair Dismissals Acts, 1977 to 2001 before the Tribunal is one of “constructive dismissal”. The Tribunal determines that the “dismissal” of the claimant was unfair in that the claimant was entitled to terminate his employment because of the conduct of the employer. It was agreed in evidence that the claimant worked the early shifts and the reason that he did so was also agreed. The claimant was placed on late shifts for two to three weeks. This was purportedly done so that he would be aware of the result of any shortfall of foodstuff preparation. The Tribunal do note that the evidence indicated that this happened twice at most over a considerable period of time. In any event the claimant was not told when these night shifts would end or that he would not have to work the shifts for three weeks or so only. The head chef was aware that the claimant had worked the early shifts for a considerable length of time and in fact had previously rostered him on early shifts, when he (The head chef) was assistant head chef. He was also aware that the claimant could not work the late shifts because of his location and dependence on public transport. The evidence of the claimant that his name was excluded from the roster is accepted by the Tribunal. The Tribunal is of the view that there were other issues between the claimant and the head chef and that the issue of the morning shift work was used to force the claimant’s hand. Thus the Tribunal finds in favour of the claimant.

Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001, succeeds and the Tribunal awards the claimant the sum of €4,000.00, as compensation.

The claim under the Redundancy Payments, Acts, 1977 to 2001 was withdrawn.

The claim under the Minimum Notice and Terms Of Employment Acts, 1973 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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