

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

CASE NO.

UD356/2006

WT108/2006

against
3 Employers
under

ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Halpin B. L.

Members: Mr D. Moore
Mr. S. O'Donnell

heard this claim at Dublin on 4th August 2006
and 20th November 2006

Representation:

Claimant XXXX

Respondents: Thomas M. Rowley, Doyle Associates, Solicitors, Orchard House, Main Street,
Rathfarnham, Dublin 14

XXXX were not present or represented.

The determination of the Tribunal was as follows:-

Claimants Case

The claimant gave evidence. She stated that she commenced employment with the previous owners of the fast food premises in 2000. Her duties included ordering stock, compiling staff rosters and she reported to her manager (known as Mr. R).

Around October 24th 2005 the business was taken over by the respondent company. The claimant was asked if she would like to remain working there and she agreed. On the first day after the takeover the owner (known as Mr. B) informed the staff that he would look after them all and that they all had a job there. The claimant was asked to organise a staff meeting for the following day and was also asked how the business could be improved. She said that Mr. B was fully aware of her position within the business. Nine of the ten staff attended the meeting in a restaurant next door to the respondent's premises. Mr. B told those present that the business

was not running smoothly, service was poor and the food served was inedible. The claimant said that she understood that Mr. B, as the new owner, wanted to improve the business. At the meeting all staff present were asked to complete a form, indicating six months probation, and return it to him when they were next in work. Mr. B also wanted to ascertain the staff's working hours. The claimant said that she did not say anything at the meeting but spoke to Mr. B in private.

She informed him that she had only worked the day shift during her five and a half year employment and that she had carried out the role of assistant manager. He asked what her "excuse" was for not working at night and he told her that he did not need her "doing this job". She was also told, not asked, to work nights in future. When she asked if there was a chance of not working nights she was told no. A witness (the franchise-training manager) was present for some of this conversation.

The claimant told the Tribunal that she felt she deserved better, she had to sign a form for six months probation, she would no longer be assistant manager and would be required to work nights. The claimant walked outside. She told her colleagues present what had occurred. They were amazed. She returned to speak to Mr. B again and told him not to input her name on the roster as she thought it was what he wanted. The claimant said that Mr. B did not ask why and laughed saying "ok". She tendered her resignation.

She later rang Mr. B requesting monies owed to her. She was told she would be paid €8 per hour and was to come to collect the cheque. She explained that she had been paid €8.75 per hour by her previous employer. Some time later she received a cheque for €32 with no notification attached. When asked, the claimant stated that, to her knowledge, she had taken approximately six days annual leave. The claimant gave evidence of loss.

On cross-examination the claimant stated that she had no written contract of employment and received no payslip from the respondent company. She said that she believed her work permit was her contract. When asked she said that she had never been given notification by her previous employer that her job title was assistant manager. She again stated that there were four reasons why she left; her pay was reduced, the six months probation, night work was required and she would no longer be assistant manager. She said that she had not been told to disregard the bottom part of the application form stating six months probation.

When asked, she said that she had no knowledge if Mr. B had any prior knowledge of the workings of the premises. The claimant said that she felt Mr. B wanted her to leave. She explained that she had worked nights, in the past, when other employees were on sick leave. When put to her, she said that Mr. B he had told her she might have to work 4 or 5 nights in the future.

Respondent's Case

The owner of the first respondent company gave evidence. He explained that he commenced negotiations with the previous owner of the premises two months before his company took it over on October 11th 2005. He was given one hour's notice from the fast food company from which he was taking over a franchise in Donnybrook that the takeover had taken place. During those previous two months he visited the premises on various occasions and times of the day and observed the running of the business.

When he arrived in the premises on October 11th 2006 a representative (known as Mr. Z) present

from the company stated he was acquiring the franchise and some of the existing staff, including the claimant. Mr. Z informed him that the premises were to be shutdown for a period for refurbishment and some of the appliances on the premises were out of action. The shop closed immediately and all the food prepared was binned. The staff were informed that he was the new proprietor of the business. He spoke to the staff present about how the place was run and what duties they performed. He said that he was not given any information regarding their wages and he left it to his solicitor.

On October 24th 2005 he asked the claimant if she could contact all staff to attend a meeting the following day. The meeting was held in a fast food premises at 2p.m. on October 25th 2005. He introduced himself to all present, told them their jobs were secure and asked the claimant to hand out a page to get the staff's names and contact numbers. He informed them that when the premises re-opened it would be like a "new shop". Uniforms and hairnets would be worn and staff would have to attend hygiene courses. He said that the re-action from the staff was okay. Application forms were handed out and he told them that there were to disregard the last paragraph. This paragraph related to six months probation. He said that he only wanted to get the staff details, it was a standard form issued by the franchise company. There were a number of questions asked relating to working the night shift and they were informed there would be another meeting the following day relating to health and safety.

After the meeting the claimant approached the witness and the franchise-training manager, who was present for the entire conversation. He told the claimant that she might have to work one or two night shifts a month and that he would be also working on the premises. The claimant was fairly adamant that she would only work the day shift saying it was not for her and not to put her on the roster. He told the Tribunal that he had never mentioned a figure of €8 wages per hour nor had the claimant mentioned the rate of €8.75 at the general meeting. The claimant told him that she would have to be paid €400 for a fifty-hour week. This meeting only lasted about five minutes. He said that he had not laughed at the meeting.

He told the Tribunal that the following day four other staff did not turn in for work and he had to find replacements. While the witness was in America he received a telephone call from the franchise-training manager relating to the claimant looking for monies owed to her. He said that he pulled the figure of €32 "out of his head".

On cross-examination he said, when put to him, that he had paid the claimant €32 as she had only worked for him for approximately four hours.

The franchise-training manager (known as Ms M) gave evidence. Her job was to train staff in new restaurants. She knew of the take over the day before it happened. She went to the meeting with staff to reassure them that their jobs were safe and their terms and conditions would remain unchanged. The application forms were to record the employees' details. Probation was not mentioned at the meeting. The claimant was told she would be required to work nights only in an emergency. The claimant was not an assistant manager; very few restaurants have an assistant manager. The claimant was a supervisor. The witness ran the shop for two weeks shortly after the take over. The claimant came in asking to be paid. She phoned the new franchisee and on his instructions paid the claimant €32. The claimant did not ask for holiday pay.

On cross-examination the witness said that she had known the claimant for about 2 years. The witness did not know that the claimant hired staff. When she paid the claimant she did not know what her wages were. The witness did not tell the staff about the take over.

The chairman asked the representatives if the previous franchisee is aware of the claim. Both said that he is. The previous franchisee is under the impression that he is no longer a respondent. The chairman stated that that was a false impression. The franchisor is also a respondent in this case.

Determination

The Tribunal is satisfied that the claimants working conditions had apparently changed to the extent that she felt forced to resign. Her claim under the Unfair Dismissals Acts, 1977 to 2001 succeeds. The Tribunal awards the claimant €5,000. The three respondents are jointly and severally liable.

The claim, under the Organisation of Working Time was not prosecuted by the claimant, accordingly this claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)