

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO

Employee

UD865/2006

against

2 Employers

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms R. O'Flynn

Members: Mr. M. Forde  
Mr J. McDonnell

heard this claim at Cork on 26th September 2007

Representation:

\_\_\_\_\_

Claimant :

Mr Donnchadh McCarthy, B.L., instructed by Martin A. Harvey & Co.,  
Solicitors, Parliament House, 9/10 Georges Quay, Cork

Respondent :

Managing Director

The determination of the Tribunal was as follows:

On form T2, notice of appearance submitted by the respondent a preliminary issue was raised in relation to the claimant's submitting form T1A outside the six month time limit as stipulated under Section 8 (2) of the Unfair Dismissals Acts, 1977 to 2001

\_\_\_\_\_

\_\_\_\_\_

**Respondent case:**

The general manager in his evidence told the Tribunal that the claimant commenced her employment on a part-time basis with the respondent when the restaurant opened in October 2003.

She was one of their best waitresses and was a very hard worker. As far as he was aware she was in College and towards the end of her employment she worked also in a retail outlet. Towards the end of November 2005 her attendance became erratic. Once or twice she rang up and there were times when she sent in her brother to cover her shifts. Her brother worked there as a trainee bartender. He did not speak to the claimant but let it go. She then rang the supervisor to say she was sick and when witness enquired from her brother and friends they said initially that she was sick but then had recovered. At the end of three weeks when there had been no direct contact from the claimant he issued a P.45.

On 20<sup>th</sup> January 2006 at 6pm, which was a busy time for the restaurant, he received a telephone call from the claimant who was upset and enquired as to why she was let go. He respondent said since he did not hear from her he did not know what was happening. He asked the claimant to call in or ring and make an appointment to discuss the matter however she did not do so. The next contact received was a letter from her solicitor. The claimant was one of their best members of staff and the respondent did not want to see trained staff leave.

In cross-examination witness said that he let the claimant's brother work her shift as they had no cover. He could not say if he told the claimant she was to cease sending in her brother to cover her shifts. It was around the 7<sup>th</sup> December 2005 that the claimant rang the supervisor to say she was sick but she did not submit a doctor's certificate.

#### **Claimant's case:**

The claimant in her evidence agreed that she received the P.45 but at the time she did not know its significance. She rang the general manager the following day which was around the 20<sup>th</sup> January 2006 and asked why she received the P.45. She could not remember much of the conversation and was crying. The general manager asked her to come in to discuss the matter but she was too embarrassed as her friends who worked there wanted to know why she was fired. She did not receive a letter to say she was sacked and went to her solicitor to seek advice.

She worked an average of fifteen hours per week over three nights. Initially when she commenced working for the respondent she was at college and after graduating she worked during the day at a retail fashion outlet. She was offered additional hours at the retail outlet but it was her intention to continue working also with the respondent. She always gave in or around an hours notice if she was not coming in for her shift and she had cleared it with a member of management that it was okay to get her brother to cover her shift. As she suffered from asthma and was prone to chest infections her doctor advised her against working with food in December 2006. A doctor's certificate was shown to the Tribunal during the course of the hearing. She worked at her day job while she was out sick as this did not involve working with food. She went out sick in or around the 5<sup>th</sup> December 2005. She rang the respondent and spoke to her supervisor saying she would be out for a few weeks and that she would make contact again when she would be returning to work. She had intended ringing the respondent the day she received the P.45. She told the Tribunal of her efforts to obtain alternative employment.

In cross-examination witness said that she did not tell her friends she had been fired. When she received the P.45 she asked the general manager "what's the story", she did not know what it meant. Her supervisor told her there was no need for a doctor's certificate.

In answer to questions from Tribunal members in relation to her telephone call with the respondent on 20<sup>th</sup> January 2006 and if she understood her job was still there, she said she did not know and

was confused. She felt the respondent did not want her.

**Determination:**

On the preliminary issue, and having heard the evidence and submissions on behalf of the Claimant and the Respondent, the Tribunal is satisfied that the P.45 was issued on 16<sup>th</sup> January 2006. Having heard the evidence the Tribunal is satisfied, that the intention of the Respondent in issuing the P.45 on this date, was to terminate the Claimant's employment forthwith.

The Claimant has the right under the Minimum Notice and Terms of Employment Act 1973 to be given one week (seven days) notice of the termination of her employment, which in the within case would result in the date of dismissal being the 23<sup>rd</sup> January 2006. However, the claimant is obliged to initiate the claim with the Tribunal within six months of the date of termination of her employment. The word 'month' means a calendar month, pursuant to section 12 of the Interpretation Act 1937. In the within case, the claim was submitted to the Tribunal on 24<sup>th</sup> July 2006, which is outside the required time limit.

No evidence of exceptional circumstances was advanced by, or on behalf of the Claimant.

Accordingly, pursuant to Section 8 (2) of the Unfair Dismissals Acts 1977 to 2001, the Tribunal does not have jurisdiction to hear this case.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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