

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
RP364/2007
UD692/2007

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr F. Cunneen
Mr G. Lamon

heard this claim at Dublin on 12th December 2007

Representation:

Claimant:
In person

Respondent:
In person

The determination of the Tribunal was as follows:

The claimant worked as a waitress in the respondent's restaurant from 22nd January 2005. The restaurant was subject to a transfer of undertakings in April 2007 at which time the respondent took over the business. The employment was uneventful until 29th June 2007 when the claimant tendered her resignation with two weeks notice. By agreement this period of notice was extended by a further week until 22nd July 2007.

On 15th July 2007 the claimant developed toothache and was unable to complete her shift. Her position is that on telling her manager that she was unable to complete her shift her manager told her that if she went home there was no point in her returning.

The respondent's position is that her manager accepted that the claimant had to go home and asked the claimant to let him know if she would be able to work her remaining shifts, beginning on 19th July 2007.

The claimant attended her dentist on 16th July 2007, she was not rostered to work that day. There was a phone conversation between the claimant and her manager on 18th July 2007, the respondent's position is that the claimant did not intend to return to work her remaining shifts. The claimant could not recall the content of the conversation. The claimant did not return to work.

Determination:

The Tribunal, having carefully considered the evidence in this case, prefers the evidence of the employer and decides that the claimant was not dismissed. The claimant was serving her notice that she had tendered to the employer and had only days to run, and, in the circumstances, it wasn't probable that the employer would have reacted in the manner described. Her claim therefore, under both the Unfair Dismissals Acts, 1977 to 2001 and the Redundancy Payments Acts, 1967 to 2003 must fail

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)