

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NOS.

Employee

UD792/2007  
MN632/2007  
WT269/2007

Employer

Under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL  
Members: Mr F. Cunneen  
Mr G. Lamon

heard this claim at Dublin on 10th January 2008  
and 11th April 2008

#### Representation:

Claimant: Mr. David Gaffney, Coakley Moloney, Solicitors, 49 South Mall, Cork

Respondent: Mr. Brian Hickey, J. B. Hickey & Associates Solicitors, 10 Blessington Street,  
Dublin 7

The determination of the Tribunal was as follows:

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

The Claimant gave evidence to the Tribunal. He began working for the Respondent, which is a restaurant, in December 2001. He worked as a waiter and is a foreign national. His employer secured a work permit so that he could be employed in the State and he received a contract for two years. He told the Tribunal that he was not paid extra for bank holidays, he was not paid extra for Sunday work or for overtime.

He received another contract after two years for another two years. Circa May 2002 he was offered a supervisory/ assistant manager role. The Respondent had another restaurant in Navan and the general manager over the restaurant gave the Claimant three choices: that he work in the Navan restaurant, or his wages be reduced to the minimum wage, i.e. stay in the Dublin restaurant or that

he leave. He told them that he could not move as he had ties in Dublin. The topic was never brought up again.

There was no bullying or harassment document in the company. He did not get a booklet on managing people and was not trained in management. The co-owner (FM) told him that if he had a problem with staff then he was to go to him.

At one time FM told him to reduce the staff working on shifts. He did not agree with FM and told him it would be impossible.

On 8<sup>th</sup> August 2007 the co-owners, (FM and KOD) called to the restaurant at about 4.30 pm, he himself began work at 4.00 pm. They told him that they had bad news and FM told him that he would have to leave. He asked him why and FM told him that it was because he could not manage staff and that staff were leaving / threatening to leave. He said to them that he was told to cut the staff hours and the staff were not happy. They left and FM returned. He told him that if he wanted to stay he could but that he would have to change the staff rota. He himself worked from 4.00 pm to 12.00 am, and they wanted him to extend that to work lunchtime also; FM wanted him to work more hours for the same money. KOD left and FM remained. He explained that if he worked lunchtime he would have to have an extra day off, and FM was not happy about this. FM called one of the waitresses into the room. The waitress tried to blame him for an incident that had happened and told him that he was not fair. She then told FM that she could not work with the Claimant. FM then told the Claimant to go, to leave the job. He did not leave the job voluntarily; "The last sentence he said was I had to leave, he said I had to leave". He then got his shoes and trousers and left.

Cross-examination:

When it was put to the Claimant that the meeting on 8<sup>th</sup> October was principally because of staff complaints about him and how he treated them and rostered them the Claimant replied that the first thing that FM said to him was that they had bad news for him. When put to him that he favoured some waitresses over others and gave others fewer hours he replied that they told him to cut staff hours and that he treated everyone equally. The Claimant denied that he was asked to work his notice.

### **Respondent's case:**

The co-owner of the restaurant gave evidence to the Tribunal. He explained that he had difficulties with the Claimant on or about the first week of July 2007. On the first week of July the head chef said that there was a problem and a lot of unrest between the floor staff and the Claimant. She asked him if they could meet outside the restaurant in a nearby hotel to discuss the matter. He met her and three staff and they had a conversation about the general unrest between the staff and the Claimant. This was the first that he had heard about the matter and he was surprised and shocked.

He had to go on two weeks holidays and on his return the head chef told him that an employee (Ms E) had left. He and the co-owner (KOD) met the Claimant. He did not tell the Claimant of the meeting he had with the staff in the hotel. They discussed Ms E leaving and another staff member episode. They also had difficulties with his working hours. He did not tell the Claimant that he had to leave, as they had not gone to the meeting to dismiss the Claimant and they wanted to hear the Claimant's side of the story.

The Claimant gave his side of the story and he did not agree with it. The Claimant became very

irate. The Claimant told him that they never backed him up” and why was he a supervisor. The Claimant used bad language and waved his hands repeatedly saying that he would leave. They told the Claimant to be calm.

Later on Ms L arrived and gave her side of the story she told of the Claimant reducing her hours, flirting with some of the female staff and giving them more hours. She told him this and told him again whilst the Claimant was present. The Claimant leaned towards her and pointed his finger and was annoyed.

He told Ms L that it was ok and to leave the room. He then told the Claimant, “You have told us you want to leave, well that fine, you will get everything that you are owed and I will speak to the accountant and you will get holiday pay and wages owed”. He told him this because he did not think that the Claimant would change, (mend his ways). He did not try to dissuade the Claimant when he told them that he would leave they told the Claimant to calm down. He did not say to the Claimant that he had bad news for him because they did not meet the Claimant with the intention of dismissing him.

**Cross-examination:**

The witness was asked if he took statements from the waitresses and he explained that he did not. He had to go on holidays and KOD did not deal with the situation as he himself was more “hands on” than KOD. When asked if the company had procedures (disciplinary/grievance procedures) he replied “No”.

The co-owner of the restaurant KOD told the Tribunal that on 8 August 2007 he attended a meeting in the restaurant. The other co-owner FM told him that the floor staff complained that the claimant who was the assistant manager gave preferential treatment to other staff. One of the floor staff had left prior to the 8 August 2008. KOD and FM asked the claimant to come downstairs. FM put the allegations that staff made to the claimant. The claimant became very annoyed and told him that there was no way he could control staff. The claimant told him that he would leave if he was not going to agree with his punishment of staff and that he would prefer to go. FM tried to get the claimant to calm down and explained that the meeting was just to explain his behaviour towards staff. FM tried to get the claimant to reconsider his decision. FM told the claimant that he needed to change his attitude towards staff. On more than three occasions the claimant said he would leave and FM tried to get him to calm down but the claimant remained agitated. The meeting lasted approximately a half hour. When KOD left the meeting the claimant stated his intention to leave. It was never said to the claimant that he should leave. FM tried to dissuade the claimant from leaving and he remained with the claimant for a considerable length of time.

Two floor staff had threatened to leave if the owners did not speak to the claimant. When the claimant left FM deputised for the claimant for some time. KOD was an investor and he did not have any direct involvement in staff. The reason that he was present at the meeting was that he was on the premises that day. He left the meeting and he thought that FM would be able to get the claimant to remain with the respondent. He met FM on average twice a week and he was more concerned with the financial side of the business.

**Determination:**

Regarding the dismissal and based on the evidence adduced the Tribunal is satisfied that the claimant resigned from his position with the respondent company and that his claim under the Unfair Dismissals Acts, 1977 to 2001 must fail.

The Tribunal is satisfied that the claimant is entitled to four weeks minimum notice and his employer paid two weeks pay and on that basis the Tribunal awards two weeks minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 in the amount of €1076 (€538.00 gross per week)

No evidence was furnished in relation to holiday pay and therefore no award is being made under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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