

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

Employee

**CASE NO.**

MN230/08  
UD247/08

**against**

Employer

**under**

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. L. Tobin  
Mr. S. O'Donnell

heard this claim at Dublin on 16th June 2008.

**Representation:**

Claimant: Ms Audrey Coen B.L. instructed by John O'Leary & Co., Solicitors, Millennium House, Main Street, Tallaght, Dublin 24

Respondent: Ms Kiwana Ennis B.L. instructed by Rosemary Ryan & Co, Solicitors, 13-15 Rathfarnham Road, Terenure, Dublin 6W

The determination of the Tribunal was as follows:-

**Respondent's Case:**

The respondent is a proprietor of an off-licence premises. He employed 10-15 staff. The claimant commenced employment in a part-time capacity in 2005/2006. When the Manager of the off-licence left the business he offered the claimant full time work and the position of Manager. The claimant's job entailed ordering stock, price control and the day-to-day management of the off-licence.

On 2<sup>nd</sup> November 2007 the claimant telephoned the respondent and informed him that he was going to resign. By letter dated 3<sup>rd</sup> November 2007 the claimant tendered his resignation effective from 31<sup>st</sup> December 2007. The respondent subsequently spoke to the claimant. The claimant contended that he was unhappy and the respondent wished him well. However, the respondent asked him if he was in a position to stay on until he could replace him in the job and offered him an increase in his

salary of 100 euro. The claimant agreed to this.

The respondent's son (P) worked part-time for the respondent and wished to pursue his career in management. The respondent employed a part-time Romanian national who was keen to work in the managerial field. The respondent also employed another assistant manager.

Because of a family death in mid 2007 and the running of the business the respondent found it difficult to keep two to three arrangements for meetings with the claimant but he always telephoned the claimant if he could not meet him.

The respondent contended that he never had a telephone conversation with the claimant at the end of November 2007 in which the claimant stated that he was revoking his resignation.

Under cross-examination the respondent said the claimant had no contract of employment. Neither did the respondent have grievance procedures in place. Both staff and management meetings took place as often as was necessary and the claimant attended these. If staff had issues they were encouraged to talk to management.

The respondent could not recall when he actually had the conversation with the claimant following the claimant's resignation letter. The respondent had indicated that he would have to find someone to replace the claimant in the job. In November 2007 the respondent set about making alternative arrangements.

P had a meeting with the claimant in a pub on 3<sup>rd</sup> January 2008 and the claimant had indicated that he was unhappy, as he could not talk to the respondent who was so busy. He asked the claimant if he could stay on until end January early February 2008 and the claimant said that he could.

At 4.45 pm on 30<sup>th</sup> January 2008 the respondent telephoned the claimant. The claimant was under the impression that the respondent was annoyed that he had left work early. A heated discussion then ensued and the respondent said he did not want the claimant working in the company any longer. After that telephone call the respondent wrote a letter to the claimant dismissing him with effect from 5 pm that day and enclosed his P45 and monies owing to him.

### **Claimant's Case:**

The claimant commenced employment with the respondent in August 2005 in a part-time capacity. The respondent offered him full time employment on 22<sup>nd</sup> February 2006 and he was appointed Assistant Manager. His salary was €700 per week. In August 2006 he was promoted to Manager and his salary increased to €800 per week. He was promised he would receive an increase of €100 in August 2007.

In September 2007 the claimant approached the respondent with a view to discussing his salary increase promised in August 2007 and other matters. He made seven further attempts to discuss the position but to no avail.

The claimant eventually spoke to the respondent by telephone on 2<sup>nd</sup> November 2007. The claimant spoke about resigning from the company. The respondent urged the claimant to reconsider his intention of resigning and promised to meet him on 5<sup>th</sup> November 2007. However, the meeting did not take place. On 8<sup>th</sup> November 2007 the claimant tendered his resignation effective from 31<sup>st</sup>

December 2007 in a letter dated 3<sup>rd</sup> November 2007. The claimant hand delivered this letter to P and asked him to pass it on to his father (the respondent). The claimant subsequently received a telephone call from the respondent apologising for not meeting the claimant as arranged and to bear with him as he had plans for the future.

The claimant eventually received his pay increase on 19<sup>th</sup> November 2007. Three to four days later the claimant engaged in a conversation with the respondent. The respondent praised the claimant's work and promised to discuss matters. That meeting never took place.

The claimant continued working to 31<sup>st</sup> December 2007. On 3<sup>rd</sup> January 2008 the claimant met P, as he wanted to put him in the picture as to where he thought his job was going. He discussed the delivery system of the off-licence, rostering and holidays. The claimant wanted transparency regarding rostering and holidays. He discussed his own holiday arrangements with P. He wanted to take holidays from 10<sup>th</sup> January to 17<sup>th</sup> January 2008. P asked him not to take holidays as his father (the respondent) was in a difficult mood. The claimant indicated that there were no definite arrangements in place within the company regarding the taking of holidays. He usually phoned the respondent a week in advance of his taking holidays.

Upon the claimant's return from a week's holidays on 18<sup>th</sup> January 2008 and one hour into his shift, the company secretary hand-delivered a letter to him from the respondent. This letter dated 14<sup>th</sup> January 2008 acknowledged the claimant's letter of resignation of 3<sup>rd</sup> November 2007 and asked if the claimant would stay on as Manager until 1<sup>st</sup> March 2008. The claimant was in shock and did not know how to react. On 21<sup>st</sup> January 2008 he wrote to the respondent informing him that he had withdrawn his notice to leave the company at the respondent's request in a telephone conversation following his pay rise on 19<sup>th</sup> November 2007. At the end of November 2007 he informed the respondent that he was not now leaving the company. The claimant said he was happy to remain as manager.

On 30<sup>th</sup> January 2008 the claimant was rostered to work until 5 pm. He left at 5.20 pm approximately. Someone told him that a new manager was starting. He was in shock. At approximately 8 pm he received a telephone call from the respondent who said the working relationship was over and told him to do what he had to do. A letter dated 30<sup>th</sup> January 2008 enclosing the claimant's P45 and his wages and holiday pay were hand-delivered to his house later that evening. The letter stated that the claimant's resignation was received and accepted by the company and his service was no longer required as of 5 pm that day.

Under cross-examination the claimant said that following his wage increase on 19<sup>th</sup> November 2007 he definitely had a conversation with the respondent thanking him for the wage increase and he gave him a commitment to stay on in the company.

The claimant said in hindsight that he should have written a letter to the company revoking his resignation. The revocation of the letter of resignation was discussed in a conversation with the respondent.

The claimant established loss for the Tribunal.

## **Determination:**

The claimant commenced employment with the respondent in August 2005 in a part-time capacity. The respondent offered him full time employment on 22<sup>nd</sup> February 2006 and he was appointed Assistant Manager. His salary was €700 per week. In August 2006 he was promoted to Manager and his salary increased to €800 per week. He was promised he would receive an increase of €100 in August 2007. In September 2007 the claimant approached the respondent with a view to discussing his salary increase promised in August 2007 and other matters. He made seven further attempts to discuss the position but to no avail.

The claimant eventually spoke to the respondent by telephone on 2<sup>nd</sup> November 2007. The claimant spoke about resigning from the company. The respondent urged the claimant to reconsider his intention of resigning and promised to meet him on 5<sup>th</sup> November 2007. However, the meeting did not take place. On 8<sup>th</sup> November 2007 the claimant tendered his resignation effective from 31<sup>st</sup> December 2007 in a letter dated 3<sup>rd</sup> November 2007. The claimant hand delivered this letter to P (the Respondent's son) and asked him to pass it on to his father (the respondent). The claimant subsequently received a telephone call from the respondent apologising for not meeting the claimant as arranged and to bear with him as he had the claimant figuring in his plans for the future.

The claimant went on holidays on the 10<sup>th</sup> January for one week. Upon the claimant's return from a week's holidays on 18<sup>th</sup> January 2008 and one hour into his shift, the company secretary hand-delivered a letter to him from the respondent. This letter dated 14<sup>th</sup> January 2008 acknowledged the claimant's letter of resignation of 3<sup>rd</sup> November 2007 and asked if the claimant would stay on as Manager until 1<sup>st</sup> March 2008. The claimant was in shock and did not know how to react. On 21<sup>st</sup> January 2008 he wrote to the respondent informing him that he had withdrawn his notice to leave the company at the respondent's request in a telephone conversation following his pay rise on 19<sup>th</sup> November 2007 and that he was happy to remain as manager.

On 30<sup>th</sup> January 2008 the claimant was rostered to work until 5 pm. He left at 5.20 pm approximately. Someone told him that a new manager was starting. He was in shock. At approximately 8 pm he received a telephone call from the respondent who said the working relationship was over and told him to do what he had to do. A letter dated 30<sup>th</sup> January 2008 enclosing the claimant's P45 and his wages and holiday pay were hand-delivered to his house later that evening. The letter stated that the claimant's resignation was received and accepted by the company and his service was no longer required as of 5 pm that day.

It is the unanimous view of the Tribunal that the claimant was dismissed from his employment by virtue of the phone call of the 30<sup>th</sup> of January 2008 and letter of the same date.

The claimant had no contract of employment. Neither did the respondent have grievance procedures in place. The Tribunal takes the view that the respondent's treatment of the claimant was not how a reasonable employer would treat an employee in the circumstances. There was a lack of fair procedures and having regard to all the circumstances there were no substantial grounds justifying the dismissal within the meaning of Section 6 (1) of the Unfair Dismissals Act 1977. For all the reasons set out the Tribunal determines that the claimant's dismissal was unfair. However the Tribunal also takes the view that the claimant contributed to his dismissal because he did not withdraw his resignation by letter particularly when he had communicated his decision to resign by letter.

The Tribunal determines that compensation is the appropriate remedy and, taking account of the contribution made by the claimant to his dismissal, awards the claimant compensation in the amount of €5,000.00 under the Unfair Dismissals Acts, 1977 to 2001.

The Tribunal allows the claim for minimum notice and awards the claimant compensation of €1,800.00 which is equivalent to two weeks gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

