

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD413/2008
MN367/2008

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: Ms. P. McGrath B. L.

Members: Mr. A. O'Mara
Ms. M. Mulcahy

heard this claim at Dublin on 29th July 2008

Representation:

Claimant: Mr. Blazej Nowak, 19 Talbot Street, Dublin 1

Respondent: Mr David Keane, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's case:

The claimant gave evidence that he started working as a kitchen porter for the company on 27 February 2007. He came back from his holidays at the end of March 2008. He believed that he had two days off on the Monday and Tuesday following. He returned to work on Wednesday 2 April 2008, and was given a cessation form, which he was asked to sign. He was told that if he refused to sign it, he would not be given his P45. He refused to sign the form. He saw on his roster that he was marked absent for the previous Monday and Tuesday, but he understood that he had these two days off.

He said he was told that he would get his job back if he signed the form. He had meetings with BC and BM on 2 and 4 April 2008, at which he was told to sign the form, but he didn't understand it, so he refused. Even if he had accepted their offer, the money would be less. He hasn't worked since, but has applied for other jobs, and was due to start work at the beginning of

September. His gross pay was €380 per week.

BC told him by phone on Tuesday 1 April 2008 not to come back to work, that his job was gone, but he was also told to come back to sign the cessation form. He accepted that, at the meeting on 4 April 2008, he was told that there was work for him, but he couldn't imagine working for them again after the way he had been treated.

Respondent's case:

The sous chef (BC) gave evidence that the claimant reported to him, and worked with him in the kitchen. There was a good working relationship between them. He said that he had been having problems with the other two porters. The claimant came in on Sunday 30 March 2008, and was rostered to work the following two days, but he did not show up. The claimant lived with the other two porters, and he tried to ring him without success. When the claimant rang in, he asked him why he hadn't come in, and he answered that he had a new job. He did not say anything to the claimant about signing a cessation form. He denied telling the claimant not to come back to work.

At a meeting between the claimant, BC and BM on 8 April 2008, the claimant was told by BM that there would be no problem if he wanted to come back to work, but the claimant just kept saying that it wasn't fair. He denied that the claimant was asked to sign the cessation form at the meeting.

The former HR Manager (BM) gave evidence that she knew the claimant, and had been trying to contact him about his failure to turn up for work. She had a meeting with him on 8 April 2008, at which she asked him what his intentions were. He replied that he didn't want to work at the hotel anymore. The other two porters had said the same thing. She said she would have been happy to take him back, but he didn't want to return, so she reluctantly accepted his resignation. The cessation form was given to him after he said he was leaving. There was no discussion about him working for less money if he stayed. She said that there may have been an error on the written roster, but regardless of this, his job had been held open for him if he had wanted it. They did not want to dismiss him.

Determination:

The Tribunal has carefully considered the evidence adduced. The Tribunal has no reason to believe that the claimant genuinely believed that he was not working on the Monday and Tuesday. Additionally, the Tribunal accepts that the sous chef was extremely annoyed at the failure of the claimant to turn in for work on the Monday, as he understood the claimant was meant to be at work on that day.

At some point late in the week, the sous chef clearly had words with the claimant on the telephone. He did not accept that a genuine mistake had been made.

The Tribunal notes that the claimant's co-kitchen porters had also failed to turn up for work, which had added to the sous chef's frustration. The claimant did not satisfactorily explain how he and his housemates had all failed to turn up for work.

The Tribunal finds the evidence of the respondent somewhat compelling. Both sides accept that, at a meeting on either the 4th or the 8th April 2008, the claimant was told that his job was still there, and he could take it up. Given that his was a unionised workplace, there could be no question of a

drop in basic wage, and the Tribunal accepts this was not suggested.

The claimant opted to leave his employment, which was his entitlement, but there can be no doubt that he was not dismissed from his employment.

Therefore, his claims under the Unfair Dismissals Acts, 1977 to 2001, and the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

