

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
2 Employees

CASE NO.
MN474/2008
MN475/2008

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D Mac Carthy SC

Members: Mr E Handley
Mr O Nulty

heard this claim at Drogheda on 5th November 2008

Representation:

Claimants: In person

Respondent: In person

The decision of the Tribunal was as follows:

Claimants' Case:

The two claimants (CA & CB) were employed from March 2007 to establish a restaurant. The restaurant became operational on 19th December 2007. CB received a phone call from one of the owners (OA) of the restaurant at the start of the week beginning 21st January 2008. He told the CB that he had received financial advice and that he was closing the kitchen. Both claimants went to the restaurant on Sunday and found that the kitchen was open. CA tried to talk to the other owner (OB) who was present, but she would not talk to them. They believed there was no job for them anymore. CA asked if they could take their things and say goodbye to the staff. CB went to the kitchen, took his knives and both claimants left the premises.

There was no further contact between the parties except for CB contacting OA for their P45s and letters stating that they had been dismissed, which they received. The letters to each, dated 21st January 2008, stated that they would be discharged from their employment on 25th January 2008.

Respondent's Case:

OA denied saying that the restaurant was closing but rather that he had been to his accountant and the kitchen would have to close with the amount of wages going out. The restaurant wasn't making money, there were too many staff, and the claimants wouldn't work past six or six-thirty in the evening. OA phoned CB on Tuesday 22nd January 2008 and told him to stay away from the restaurant for a week and they would talk the following Tuesday. He had not dismissed them or suspended them. He could not recall signing a letter saying the claimants had been dismissed, though he agreed it looked like his signature. He had signed a letter, but he believed it was to say they had left. He did not contact the claimants afterwards to clarify the situation as they had walked out.

Determination:

The Tribunal is doubtful of dismissal, but, on the basis of the letters handed in we find that there was a dismissal and therefore the claimants are entitled to minimum notice. Accordingly, the Tribunal awards the claimants €576.92 (five hundred and seventy-six euro ninety-two cent) each.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)