

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE - claimant

CASE NO.  
UD599/2009  
MN613/2009

against

4 EMPLOYER - respondents

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P O'Leary BL

Members: Mr J O'Neill  
Mr O Nulty

heard this claim at Cavan on 29th October 2009

Representation:

Claimant(s): Mr Michael Ryan  
Michael J. Ryan, Solicitors, Athbara House, Cavan

Respondent(s): Declan Naughton  
Organisation Solutions, 15 Ashton, Blessington, Co Wicklow

The determination of the Tribunal was as follows:

There was no appearance at the hearing by the first, third or fourth named respondents.

The second named respondent (JG) raised a preliminary point that neither she nor her husband (the first named respondent, FG) were the correct respondents as the bar/restaurant was being run by the third (GG) and fourth named respondents (RK) at the time when the claimant contends she was dismissed on her return from maternity leave. JG and FG have resumed the running of the company since January 2009.

The claimant's representative contended that the first and second named respondents are the owners of the company which hired the claimant. The claimant did not receive a P45 and believed she was working for the two first named respondents.

## Respondent's Case:

JG gave evidence that she and her husband bought the bar in 1999 and developed it. In June 2007 she opened the restaurant. In September 2008 she decided to sell the bar in order to retire. Two members of staff, the head chef and head waiter offered to lease the business and an agreement was signed on 10<sup>th</sup> November 2008.

The witness contacted the Revenue Commissioners on two occasions regarding the transfer. On the first occasion she was told that a P45 should issue to the staff and she sent a letter to staff advising them of this. During a later conversation she was told that no P45 should issue. The witness did not issue a P45 to staff, instead she made a list of staff and sent it to the Revenue Commissioners with the P35. There was no provision in the contract regarding the Transfer of Undertakings Regulations 2003.

The claimant was on maternity leave when the transfer was effected. The witness spoke to the claimant when she came to the bar with her baby. The claimant was due to resume her employment in January 2009 having commenced her leave in July 2008.

During cross-examination the witness agreed that the claimant's employment commenced on 1<sup>st</sup> July 2007. The claimant was not given a written contract of employment. The witness contended that she wrote to the claimant in October, at the address on file, along with other staff and gave her two weeks notice of the transfer.

The witness contended that she discussed the transfer with the claimant when she visited with her baby and that the claimant was happy with the new managers. The witness paid the claimant cash in respect of the October bank holiday when she visited. The witness did wonder why the claimant wrote to her when she was due to return, but she passed the letter to the new managers. The witness disputed that her husband continued to work at the bar, but contended that he may have had occasion to go there if there was a problem.

The witness confirmed that the claimant's name was on the list she submitted to the Revenue Commissioners and that she had informed the new managers that the claimant was due to return in January 2009. The managers ran into financial difficulties and the owners had to resume the running of the business. The witness confirmed that she did not write to staff giving them 30 days notice of the transfer of undertakings.

A chef at the restaurant gave evidence that he had been an employee since February 2008. He contended that he had been informed of the transfer of ownership by letter, which had come with his pay packet, and that no P45 had issued. The witness continued in his employment after the new owners took over. The witness stated that the old owners did not continue to work on the premises. The new owners bought some of the wine and beer, as there was some existing stock.

The witness explained that the new owners got into financial difficulties in late December 2008. The new owners borrowed money from the staff to pay the bills. The witness attempted to negotiate between the new and old owners. At the end the gas and electricity supply was cut off and the new owners left abruptly.

## Claimant's Case:

The claimant, a Lithuanian national, gave evidence that the respondent company employed her as a chef. The claimant commenced her maternity leave on 19<sup>th</sup> July 2008. She contended that she did not receive the letter JG stated was sent to her. The claimant agreed that she went to the bar with her baby and that she met JG. The claimant contended that JG told her that she had forgotten about her. The claimant also contended that she had not been paid by JG for the bank holiday. JG told the claimant that there would be changes and that she would inform the claimant, but the claimant did not hear more afterwards.

In December 2008 the claimant wrote to JG and her husband to inform them of her intention to return from maternity leave on 19<sup>th</sup> January 2009. When the claimant arrived for work on the 19<sup>th</sup> January 2009 she asked GG what she was to do. GG said he would speak to JG about it and told the claimant to come back on the 21<sup>st</sup> January at 12pm to work.

The claimant went to work on the 21<sup>st</sup> January 2009 and changed for her shift. No one told her what she should do or where to go. Things were different and there were new staff members. The claimant went to the kitchen and asked a new chef and the dishwasher if there was anything she could do, but they told her that there was nothing to do. Later, at around 3pm, GG told the claimant to go home.

The claimant saw on the roster that she was scheduled to work on the 23<sup>rd</sup> January 2009. On the morning of the 23<sup>rd</sup> the claimant received a phone call from GG to say that she didn't have to come back, and that he would give her a call. The claimant didn't know who she was working for and still has not received a P45. The claimant contended that FG was in the bar when she attended work on the 21<sup>st</sup> January 2009.

During cross-examination the claimant stated that she could not recall what date she had visited the bar when she brought her baby with her. RK had said to her that there would be changes. While the claimant was there JG said to GG that the claimant would be returning on the 19<sup>th</sup> January 2009.

As the claimant received no further correspondence afterwards she wrote to say she would be returning on the 19<sup>th</sup> January 2009. RK then phoned the claimant and asked why she wrote to JG, as he and RK were the new employers. The claimant contended that she had not been paid for the hours she worked on the 21<sup>st</sup> January 2009.

#### Determination:

Having heard the evidence adduced at the hearing the Tribunal finds that no transfer of undertaking took place and that the correct respondents are the first two named respondents shown in the title herein. The Tribunal took into consideration the provisions of the Transfer of Undertaking Regulations given in S.I. No.131 of 2003. In the circumstances the Tribunal find that the Claimant was dismissed and that that dismissal was unfair in all the circumstances and in particular contrary to Part IV of the Maternity Protection Act, 1994. The Tribunal deems the most appropriate remedy in this case is compensation and awards the claimant €15,000.00 (fifteen thousand euro) under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal awards the claimant one week's notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, being €380.00 (three hundred and eighty euro).

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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