

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
UD719/2008, MN653/2008

Against

Employer

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr P. Pierce
Ms E. Brezina

heard this claim at Naas on 25th November 2008

Representation:

Claimant : Ms Claire Bruton B L instructed by
Ms Ann Marie Blake, P.J. Byrne & Co, Solicitors, Athy Road, Carlow

Respondent : Ms Rosemary Mallon B L instructed by
McKenna Durcan, Solicitors, 66 Lower Leeson Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case

The respondent is a well-established hotel where hosting wedding receptions forms part of its main activities. Such receptions while spread throughout the year become more frequent from April onwards and maintained their peak for the following months. The claimant, who commenced work at the respondent's in late 1995, was the banqueting and wedding chef at the hotel. This was a fulltime role in keeping with the volume of business that such activities generated. The respondent recruited a new general manager in April 2007. While the claimant had some input into work rosters that general manager had the final say over those rosters.

Up to the end of February 2008 the general manager said she enjoyed a very good relationship with the claimant. She described the claimant as diligent and hard working. On 27 February the claimant gave a month's notice to the witness of her intention to leave the respondent. The claimant cited

two reasons for that decision, namely the witness's neglect of a greeting to her that morning and an issue over requisition books. The claimant added that her mind was made up on that decision. The witness was shocked to hear that announcement. She told the claimant of how sorry she was that the claimant felt that way. The witness denied that claimant's accusation that she wanted her out or that she undermined the claimant's position at the hotel.

As a consequence of the claimant's announcement the witness set about restructuring aspects of the hotel catering section. She offered the current restaurant chef the position of head chef and invited a former chef a position back at the hotel. That restructuring was in progress when the claimant indicated to her in mid. March that she wanted to withdraw her notice to terminate her employment. The witness was not in a position to offer the claimant her job back as by that time her position was filled.

The managing director, who knew the claimant well, first heard of the claimant's intention to resign through a phone call from the general manager. When he returned from an overseas trip the witness met and exchanged comments with her about that decision. She confirmed she was leaving and showed no sign of withdrawing her notice. Subsequent to that encounter he had two further meetings with her in March 2008. At the first meeting the witness told her that she could possibly have her job back or take up a new position in a related establishment in Naas, but first he had to speak to the two newly appointed chefs. There was no mention of the claimant's retraction of her notice and the general manager's response to it.

During the course of a second meeting in late March with her and following talks with the general manager and the two chefs the witness offered the claimant her job back from 23 April 2008. He wanted that extra time to allow the two chefs to settle into their new positions. Besides, they were not exactly overjoyed at the claimant's return to duties. When asked by her whether this gap in her employment would be treated as a break in service he replied yes. The witness told the Tribunal that he did not fully understand what that term meant. There was still no indication from the claimant that the general manager had accepted her withdrawal of her resignation.

In a letter dated 31 March 2008 the respondent informed the claimant that her notice period had expired and enclosed her P45. The witness said that the letter writer was unaware of the background to the ongoing situation with claimant. That P45 stated that the claimant's date of leaving was 22 March 2008. The witness was the recipient of a brief letter from the claimant, dated 10 April. The letter writer acknowledged she received her P45 "from you", noted her service had been broken, and added she would not be taking up employment "with you" on 23 April. Prior to that letter the respondent received a letter, dated 1 April, from the claimant's legal representatives' in relation to this case.

Claimant's Case

The claimant said she had a good relationship with her colleagues and the newly appointed general manager up to January 2008. From that time onwards she felt somewhat undermined by that manager in the way that the work rosters and ordering was conducted. By 27 February 2008 the claimant had had enough of the way of how that manager was treating her that she handed in her notice in an upset state. She told the general manger that she could not take such treatment any longer and was determined to leave the respondent when her notice expired.

Some two weeks later the claimant approached the general manager and talked of withdrawing her resignation as she felt that "things could be resolved". While the general manager told her of the

recent recruitment of two other chefs the claimant still got the impression that this manager had accepted her withdrawal. She felt relieved that she was now staying on at the hotel. The claimant accepted, however, that the respondent had to restructure its staffing needs due to her earlier announcement.

The claimant learned through colleagues that her name was not on a work roster from 22 March and that she was leaving the hotel around that time. She then had a couple of meetings with the managing director. In the course of those meetings she told him that the general manager had accepted her retraction to resign. He offered her a job back but asked her not to come back until 23 April 2008. She was not pleased at having to use up her leave and break her service up to that date. When she received her P45 in early April the claimant regarded this as the termination of her employment. She sought and obtained work elsewhere by the end of that month. Her letter to the managing director on 10 April was sent out of courtesy.

Determination

The Tribunal has carefully considered the evidence adduced. It is common case between the parties that the claimant resigned her job at the end of February 2008. There was no ambiguity about this decision and the employer was obliged to re-structure in such a way as to make up the loss of a long-standing and valued employee.

The Tribunal accepts that the claimant intended to retract her resignation but cannot find that the retraction was immediately accepted as the employer had already started its in-house restructuring.

Ultimately, and after some meetings with the Managing Director the employer offered the claimant her old job back at her old rate. Rather than take up this position the claimant made an issue of the fact that the employer had decided that the resignation and subsequent one-month delay before returning to her job would be seen as a break in service.

Whilst the Tribunal has sympathy for the claimant's position regarding the issue of break in service ultimately the Tribunal cannot find that the employer acted either unreasonably or unfairly.

In all the circumstances the claim under the Unfair Dismissals Acts, 1997 to 2001 fails.

The claimant worked out her minimum notice and therefore has no entitlement under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

