

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee –**Claimant**

UD214/2008
MN203/2008
WT101/2008

against

Employer
- **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O’Leary B.L.

Members: Mr. D. Morrison
Mr. G. Hunter

heard this appeal at Letterkenny on 11 September
and 18 December 2009 and 26 February 2009

Representation:

Claimant: Mr. Seamus Gunn, McCloughan Gunn & Co. Solicitors,
Ramelton, Letterkenny, Co. Donegal

Respondent:
Mr. Kevin O’Gorman, O’Gorman Cunningham & Co. Solicitors,
16 Upper Main Street, Letterkenny, Co. Donegal

The determination of the Tribunal was as follows:

This being a claim of constructive dismissal it fell to the claimant to make his case

The claimant was employed to work in the respondent’s revamped nightclub from 14 August 2006, initially as Head of Entertainment, later to become Nightclub Manager. The section of his contract of employment dealing with salary states, “ Your commencing salary will be x per year. You will be paid on a weekly basis with one week in arrears. You will also be paid a bonus of y per year paid on a quarterly basis. (Details of the structure of this will be discussed with you prior to opening)” In March 2007 the claimant was provided with a salary certificate in which the bonus appears to be described as guaranteed.

The claimant accepts that the General Manager (GM) gave him targets for the nightclub from the week that the nightclub opened, GM, the Managing Director (MD) and the accountants had set these and the claimant agreed with the targets. His position was that there had never been any mention of these targets being related to his bonus payments. In June 2007 the claimant was given a list of operational issues to deal with by the Operations Director (OD). He accepts that on occasion he was accused of not meeting his targets at management meetings. No bonus was ever paid to the claimant and he did not make an issue of this until some time in September 2007 when he raised the matter with the General Manager (GM), OD and the Human Resource Manager. It was then he discovered that payment of the bonus was conditional on certain targets being met.

The claimant became concerned that the records of the nightclub for the numbers of patrons paying to enter were being altered to his disadvantage. The claimant met GM to discuss this situation towards the end of October 2007 and GM agreed to talk to MD about the matter. The claimant then went on annual leave during this period of leave he heard that his bonus was not going to be paid because his targets had not been met. The claimant met GM again on 7 November 2007 and at that meeting resigned on the spot over the issue of the non-payment of the bonus.

Determination:

The Tribunal is satisfied that the non-payment of the bonus referred to in the contract of employment constituted a fundamental breach of that contract which the claimant was entitled to rely on to ground a claim of constructive dismissal. Having considered the claimant's attempts at mitigation of loss and in all the circumstances the Tribunal awards €4,000-00 under the Unfair Dismissals Acts, 1977 to 2007. A claim under the Minimum Notice and Terms of Employment Acts 1973 to 2001 does not arise in a claim of constructive dismissal. No evidence having been adduced in this regard the claim under the Organisation of Working Time Act, 1997 fails for want of prosecution

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)