

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee
–**Claimant**

UD1092/2008
WT453/2008

against

Employer- **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly B.L.

Members: Ms. J. Winters
Ms. M. Finnerty

heard this appeal at Dublin on 26 February 2009

Representation:

Claimant: Ms. Louise Gallagher, Purdy Legal Solicitors,
New Docks, Lough Atalia, Galway

Respondent:
Mr. John Connellan, Carley & Connellan Solicitors,
Anglesea Street, Dublin 2

The determination of the Tribunal was as follows:

Dismissal being in dispute in this case it fell to the claimant to prove the fact of dismissal.

The claimant was employed in a hotel from 1999 and progressed through that organisation to the position of accommodation manager with responsibility for the upkeep and cleaning of the guest rooms in the hotel and the public areas. From 6 October 2006 the respondent was contracted to provide the service for which the claimant was responsible in the hotel and the claimant and the staff who reported to her became employees of the respondent under the Transfer of Undertakings regulations. Under their contract the respondent was remunerated on a set rate per room occupancy. The room occupancy fell from an average of above 55% in 2007 to less than 45% in 2008. In October 2007 the management contract for the hotel changed and as part of this process the respondent conceded a reduction in the room rate they charged the hotel in recognition of the difficulties the hotel was finding in the deteriorating market conditions. A further reduction in room

rate was conceded to the hotel from January 2008.

When the claimant returned from annual leave in May 2008 the respondent's Human Resource and Area Managers (HR and AM) raised issues with the claimant over certain work that had been done for the hotel which the Managing Director (MD) felt the hotel should have been invoiced for. It was suggested to the claimant that she was not running the hotel in the same way as happened with other hotels where the respondent had the room servicing contract. HR and AM then carried out an audit of the cleaning standards and procedures at the hotel on 17 June 2008. As a result of this audit the claimant was summoned to a meeting with HR and AM on 24 June 2008. At this meeting, where HR and AM raised the issues highlighted in their audit, the claimant was issued with a written warning. The claimant then went out on sick leave citing workplace stress. On 11 July 2008 the claimant wrote a letter of complaint about her treatment in the workplace to MD. On 17 July 2008 MD replied to the claimant in response to her complaints. The written warning was retracted as MD recognised that correct procedures had not been followed. The claimant then returned to work. On 1 August 2008, following pressure from hotel management for further cost reductions, MD wrote to the claimant giving her 4 weeks notice of redundancy. Whilst there is a dispute between the parties as to the exact nature of the discussions, in regard to alternative employment, that took place when the claimant was served with her notice of redundancy the respondent has gained no new contracts since this time and no accommodation manager positions have arisen since the claimant's employment was terminated.

Determination:

Under cross-examination the claimant stated that she could have accepted redundancy better in April 2008 than in August 2008. She accepted that the position of accommodation manager in the hotel no longer existed with the respondent. It is clear that the disciplinary process embarked on by the respondent was flawed. A fact later accepted by the respondent. Whilst the claimant became stressed as a result of this flawed process the Tribunal is satisfied that a genuine redundancy situation existed in the respondent. Section 7 (2) (c) of the Redundancy Payment Acts, 1967 to 2007 which provides that

“ an employee who is dismissed shall be taken to be dismissed by reason of redundancy if for one or more reasons not related to the employee concerned the dismissal is attributable wholly or mainly to :-.....

c) the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or”

In these circumstances the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail. The claim under the Organisation Of Working Time Act, 1997 was withdrawn.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)