

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO(S).

UD176/2009 RP168/2009
3 Employees
WT66/2009
and

MN172/2009

UD177/2009 RP169/2009
and

MN173/2009 WT67/2009

UD178/2009 RP170/2009
– *claimant no. 3*

MN174/2009 WT68/2009

against

2 Employers

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. J. Hennessy
Ms. E. Brezina

heard this claim at Kilkenny on 7th July 2009

Representation:

Claimant(s): Mr. Phil Funchion, Noreside Resource Centre, For The Unemployed,
22 Vicar Street, Kilkenny

Respondent(s): Not in attendance and no representation

The determination of the Tribunal was as follows:-

Claimants' case:

At the commencement of the hearing, the claims under the Unfair Dismissals Acts, 1977 to 2007

were formally withdrawn on behalf of the claimants.

The claimants commenced employment in 2005 for a limited company who was involved in a bar and food and catering business. The three claimants worked in the catering side of the business, claimants No. 1 and No. 3 as waitresses and claimant No. 2 as the chef. In June 2008, the food and catering side of the business transferred to the respondent and the three claimants transferred with it and the limited company continued in the bar business. In October 2008, the respondent “did a runner” and the food and catering business ceased at that time. Claimants No. 1 and No. 2 had been on an overlapping holiday in October and claimant No. 3 had been on maternity leave. It was only when claimants No. 1 and No. 2 returned from holidays that they discovered that the respondent had left.

Determination:

The Tribunal was satisfied that the respondent had been duly notified of the hearing. However, there was no appearance by him or on his behalf.

Accepting the uncontested evidence of the claimants, the Tribunal finds that the catering side of the business, where the three claimants worked, was transferred to the respondent in June 2008 and was abandoned by him in October 2008. Accordingly, the appeals under the Redundancy Payments Acts, 1967 to 2007 succeeds against the respondent and the Tribunal awards a redundancy lump sum to the claimants, which is to be calculated on the basis of the following criteria:

Claimant No. 1

Date of birth:	10 April 1981
Date of commencement:	16 October 2005
Date of notice:	05 October 2008
Date of termination:	05 October 2008
Gross weekly wage:	€400.00

Claimant No. 2

Date of birth:	27 April 1977
Date of commencement:	26 September 2005
Date of notice:	24 October 2008
Date of termination:	24 October 2008
Gross weekly wage:	€480.00

Claimant No. 3

Date of birth:	23 January 1980
Date of commencement:	25 October 2005
Date of notice:	05 October 2008
Date of termination:	05 October 2008
Gross weekly wage:	€400.00

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

Each of the claimants was entitled to two weeks’ notice or two week’s pay in lieu of notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. Accordingly, the Tribunal awards claimants No. 1 and No. 3 compensation in the sum of €800.00 each, and claimant No. 2 compensation in the sum of €560.00, this being the equivalent of two week’s wages in each case.

Furthermore, as the Tribunal is satisfied that the claimants did not receive their holiday entitlements, the claims under the Organisation of Working Time Act, 1997 succeed and the Tribunal awards the sums of €613.00 each to claimants No. 1 and No. 3, and €735.00 to claimant No. 2.

The Tribunal notes that the claims under the Unfair Dismissals Acts, 1977 to 2007 were formally withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)