

## **EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:

Employee – claimant

CASE NO.

UD980/2008

MN919/2008

against

Employer - respondent

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: Ms N O'Carroll-Kelly BL

Members: Mr A O'Mara  
Mr P Trehy

heard this claim at Dublin on 13th January 2009 and 23rd April 2009

Representation:

Claimant: Mr Paul Henry  
SIPTU, 6th Floor, Liberty Hall, Dublin 1

Respondent: Mr Conor Keogh BL, instructed by:  
Hayes McGrath, Solicitors, 91 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

Claimant's Case:

The claimant contended that she commenced her employment with the respondent company at the end of March or the beginning of April 2003. She disputed that that her employment was terminated after two weeks, due to her employment permit not being in order, and that she was rehired in October 2003 when her documents were in order. The claimant contended that she worked with the company throughout this period and that she was paid in cash. For the first 3½ years she worked as a kitchen porter and contended that she worked between 60 and 70 hours per week during that time. She later worked in the lounge area. There was no written contract of employment.

The claimant worked without incident until 2007, when she had to return to Ukraine to deal with property issues. She told her manager that it would take from four to six weeks to resolve matters, which he said was no problem. She asked a friend in Ireland to communicate to her employer when

she would be returning. When the claimant returned on 18<sup>th</sup> June 2007 she contacted her manager who told her that the restaurant/bar was not busy. After a week or so he offered her Saturday and Sunday work and covering for holiday leave. The claimant was assigned fulltime hours from 24<sup>th</sup> September 2007.

In May 2008 the claimant's father passed away and the claimant again returned to Ukraine. She was due into work on May 18<sup>th</sup> 2008 when she found out her father was gravely ill. Her friend's son, who was in the bar at the time, informed a staff member. The claimant remained in Ukraine for two months for her father's funeral and to care for her ill mother. She returned to Ireland on 20<sup>th</sup> July 2008. She asked her manager if she could return but he told her that there was no work for her.

The claimant contended that she did not receive any warning letters sent by the company, as they were sent to her old address. She told people in the bar, and the company bookkeeper in relation to her employment permit, that she had moved into a house in June 2007 owned by her friend, a regular customer of the bar. She believed everyone knew this, but agreed that she should have written it down. The claimant was never spoken to regarding her absences.

The claimant's friend gave evidence that he spoke to the claimant's manager during her first absence in 2007. The manager said there was no problem and that the claimant should call when she returned. On 17<sup>th</sup> September 2007 the friend spoke to the owner of the bar, whom he knew, about the claimant not having been given fulltime hours. The owner told him that he would sort it out. The following Thursday a manager phoned to say the claimant would resume fulltime hours.

The friend was happy that the company was informed about the claimant's absence in 2008. He drank in the bar every Wednesday. He spoke to the manager about the claimant's need for an extended absence and that he didn't want the same situation as had occurred the previous year. The manager said that there would always be a job for the claimant. He contacted the owner two weeks prior to the claimant's return. The owner said he would contact the managers. When the friend didn't hear back he phoned the owner who said there was no position for the claimant.

The friend was certain that the claimant's change of address was common knowledge to all staff in the bar.

#### Respondent's Case:

An assistant bar manager (ABM) gave evidence that, according to his leave sheet, the claimant took holidays on week 18 of 2007 and was due back weeks 20/21. The claimant's friend informed him that the claimant would not be back for a further couple of weeks, and so, ABM employed an extra staff member to cover the claimant's shifts. ABM assigned Saturdays and Sundays to the claimant when she returned. ABM stated that the claimant was only rostered for 38 or 39 hours per week. ABM contended that the claimant was assigned her own hours on her return, though it was possible that she was covering holidays in July and August 2007.

ABM stated that the claimant was absent for three weeks from week 36 of 2007. ABM wrote to the claimant on 24<sup>th</sup> September 2007 to warn over her absence. ABM did not have a copy of the staff roster but was sure the claimant would have been rostered for work. ABM had no recollection of the owner speaking to him about putting the claimant back on the roster.

The company bookkeeper (CB) gave evidence that when she realised that the claimant's employment permit was not in order the claimant was let go and was reemployed on 2<sup>nd</sup> October 2003. CB disputed that the claimant ever worked 60-70 hours per week, or that she was paid incash. CB disputed that the claimant informed her of her change of address in November 2007. The employment permit was sent to the employee and a certified copy provided to the company.

CB typed and signed letters that the manager dictated to her. These included letters, sent on 27<sup>th</sup> June 2008 and 14<sup>th</sup> July 2008, in relation to the claimant's continuing absence and lack of communication. A letter dated the 27<sup>th</sup> June 2008 stated that if the claimant did not reply within 14 days her employment with the company would cease. The claimant's employment was terminated by letter dated 14<sup>th</sup> May 2008. CB was unaware of the reason for the claimant's absence in 2008.

#### Determination:

Having heard the evidence adduced the Tribunal finds in favour of the claimant. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and the Tribunal awards the claimant €12,968.77 (twelve thousand nine hundred and sixty eight euro seventy-seven cent).

The Tribunal awards the claimant €1,536.44 (one thousand five hundred and thirty six euro forty-four cent) under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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