

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**  
EMPLOYEE - claimant

**CASE NO.**  
MN13/08

### **Against**

3 EMPLOYERS - respondent

### **under**

### **MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr J. Goulding  
Ms K. Garvey

heard this claim at Naas on 27th July 2009.

### **Representation:**

Claimant: Ms Eileen Molloy B.L., instructed by Mr. Eric Byrne  
Patrick V. Boland & Son, Solicitors, Main Street, Newbridge, Co. Kildare

Respondents: 1<sup>st</sup> named respondent In Person  
2<sup>nd</sup> and 3<sup>rd</sup> named respondents by Mr. Mark Murphy, Murphy Gibbons, Solicitors,  
Main Street, Newbridge, Co. Kildare

The decision of the Tribunal was as follows:-

At the outset the representative for both the 2<sup>nd</sup> and 3<sup>rd</sup> named respondents sought an adjournment of this hearing but this was refused.

### **Respondent's Case:**

The first named respondent (ML) together with his daughter ran a café for approximately nine years. The claimant commenced employment towards the end of November 2006. In early 2007 ML formed a management contract with the second named respondent (JOC) and third named respondent (AMc) and they took over the management of the business. They took over the lease of the building when ML obtained the relevant planning permission. The lease was signed in July 2007.

AMc informed ML that he had a meeting with two other employees and the claimant. AMc wanted to regularise matters regarding the claimant's employment and the claimant had indicated that he was leaving.

A duty manager (EC) gave evidence. He attended the meeting at which the claimant indicated that he no longer wished to work for the new owners of the business. The claimant said that he wanted to pursue other opportunities he had in mind. The claimant had run the kitchen.

### **Claimant's Case:**

The claimant gave evidence. He commenced employment with the first named respondent on 26<sup>th</sup> November 2006. Early in January 2007 AMc intimated to him that he was the new owner of the Café. AMc held a meeting with the staff in the nightclub and the claimant and another were asked to remain when the rest of the staff left. The claimant informed AMc that he wanted a written contract. On at least three separate occasions the claimant was promised a contract.

In May 2007 the claimant was absent from work for three days and notified the General Manager of his illness. On his return to work he attended a meeting with AMc and the General Manager. AMc was annoyed that the claimant had not contacted him directly about his illness but the claimant stressed he had but was unable to speak to him. A heated argument then ensued and the claimant was verbally abused.

The claimant finished work at 2 pm on 10<sup>th</sup> June 2007. At 4.30 pm he received a call from AMc and was asked to attend a meeting at 7 pm. AMc informed him that he wanted to end their working relationship and that he was not the right man for the job. The next day a new chef commenced employment.

### **Determination:**

The Tribunal has carefully considered the evidence adduced. The application for an adjournment brought by the new owners of the Café was refused in circumstances where the evidence of the previous owner demonstrated that the transfer of undertaking had not been effected until a date after the claimant's employment had been terminated. The Tribunal finds as a fact that the relevant employer was the initial owner of the premises and the first named on the T1A form dated 17<sup>th</sup> December 2007.

It seems that the employer had delegated the management and control of the café/restaurant to the potential new owners some time in early 2007. In the course of the due diligent-type process which was being carried out, the new management had a meeting with the claimant and in the course of that meeting the claimant's employment came to be terminated. The employer had no knowledge of this meeting until after same had occurred.

The employer produced as a witness one of the gentlemen who claimed he was at the meeting wherein the claimant's employment came to be terminated. He understood that the prospective owner was interested in the claimant "coming on board" with the soon to be formed enterprise. In his evidence, he says the claimant refused the offer, as he wanted to pursue his own interests. This witness confirmed that up to July 2007 his salary was being paid by the then owner.

The claimant's version of events is in absolute contradiction to that offered by the employer's witness. The claimant's case is that he was fired by the person who intended to take over the business. The reason given was that the owner-in-waiting did not think their relationship could ever work. The claimant states he never returned to the premises after this one on one meeting and is therefore entitled to his pay in lieu of notice.

The Tribunal is satisfied that the claimant was let go against his will. Unfortunately, in this instance for the employer he unwisely delegated the manner and method of dealing with his employees to the new owner management team. Regardless of which version of the meeting the Tribunal believes there is no doubt that the employee was not paid his notice.

The Tribunal accepts that the claimant had been engaged by the employer on a contract of service and in this regard the Tribunal relies on the confirmation given by the Social Welfare Appeals Office dated 24<sup>th</sup> March 2009.

The Tribunal awards the claimant €1,021.00 against the first named respondent under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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