

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE **claimant**

RP1376/2008

Against

EMPLOYER **respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr R. Murphy
Mr F. Barry

heard this appeal at Dublin on 14th May 2009

Representation:

Appellant(s): The appellant in person

Respondent(s): Mr. Justin S. Lennon, JJ Lennon Solicitors, 16 Upper
Pembroke Street, Dublin 2

The decision of the Tribunal was as follows:-

Respondent's Case

PD told the Tribunal he was head chef with the respondent for nine years. The appellant was a commis chef and was third in command. The appellant's friend L was employed with the respondent for four years. When the appellant started initially he was an excellent worker. He was given a list of food, which had to be prepared prior to a function. Two years later the appellant's behaviour changed. The food preparation was not being done properly. One night he and the appellant had an exchange of words as the food was not ready and he was ready to dismiss the appellant. He queried the appellant on the work that he undertook for the entire day. The appellant would have known what tasks he had to undertake. He called the appellant aside and told him that he was not happy with him. Employees were forbidden to use the main entrance to the premises and the appellant used this entrance. The general manager of the hotel told the appellant not to use this entrance and he was asked to use the back entrance. The general manager of the hotel could not tolerate this any more and the appellant showed his finger at her in a derogatory manner. PD consulted the MD about this and the appellant was given a letter of warning in July 2008. Three car parking spaces were allocated for employees in the restaurant,

one for the boss and the other spaces for two managers. The appellant brought his car in to work and the general manager spoke to the appellant about this matter. He had a meeting with the appellant and he told him he had to change his behaviour. He spoke to the MD to establish what could be done about the problem.

In answer to questions from the Tribunal he stated that the appellant worked on shifts from 9am to 5p.m. and 3p.m. to the end of a shift and incidents involving the appellant occurred on both shifts. He did not know what the appellant did between 3p.m. and 7p.m. The appellant was in charge of the kitchen. The respondent gave the appellant two months to improve and the respondent could not afford to dismiss him. A formal meeting regarding the appellant's behaviour did not take place. The appellant and a colleague L were not talking to each other and he did not get involved in employees personal problems. He first spoke to the appellant about the problems in mid July 2008. The appellant bought a car the end of 2007 and parked it in one of the three car parking spaces, which were already allocated to staff up to the time he was dismissed in 2008. He spoke to the appellant on a weekly basis in relation to this and the appellant ignored him. The commis chefs were in charge when the head chef was absent. The appellant was not given a contract of employment. The appellant prepared steak, fish and vegetables. There were a number of occasions from July up to 26 October 2008 when the appellant did not prepare food. He was aware of the situation regarding the appellant's dismissal and he had a role in issuing the letter of dismissal. The respondent had no choice but to let the appellant go.

The MD of the respondent company told the Tribunal that the appellant was employed at the end of 2005. All his staff in the kitchen were employed for over three years. The appellant was a good chef. The MD was allocated three car parking spaces on his lease and the hotel had twenty-one parking places. The car park was always full. Three to four employees bought cars so that they could commute to work. The appellant parked his car in the car park. The appellant insulted the general manager of the hotel and he entered the premises through the front reception. The general manager of the hotel was unable to attend the Tribunal hearing and she had the letter of warning, which issued to the appellant. The appellant on one occasion put two specials on the blackboard from the lunch menu. The appellant was lazy beyond lazy and this was not acceptable. If the appellant were assigned to the 9am to 3 p.m. shift he would prepare breakfast. He came to the decision that the appellant had to go and he compiled a dismissal letter, which issued to the appellant on 1 November 2008.

The appellant was paid his notice and he received his holiday pay and a P45. The appellant's position has not been filled and two employees from FAS were due to start at the end of May 2009.

In answer to questions from the Tribunal he stated that he recruited barmen in November 2008. The appellant had a personality clash with the general manager. The head chef complained about the appellant on a bi weekly basis. After the appellant was dismissed he placed an advertisement in Irish Jobs.ie. In January, February 2009 the restaurant was quite. The head chef advised the general manager about the appellant and a dismissal letter was given to the appellant.

The MD stated that the appellant was well able to work but he was not going in the right direction for the past six months. The appellant was given a verbal and a written warning. Some waiters left and were replaced. He did not have an issue with the appellant's lates. He provided a reference to the appellant, which indicated that the appellant was a very pleasant, hardworking and motivated individual and was capable of taking on extra responsibilities.

Appellant's Case

The appellant told the Tribunal that in December 2005 he commenced employment with the respondent. His friend L was already employed with the respondent. He did not understand ninety nine percent of the language. If there was a function at 7.30p.m. he was given a big responsibility and he did not have enough experience for the responsibility. One evening at 6p.m. a year after he commenced employment the head chef came in and started screaming at him. He was late for work a few times. On a few occasions he was responsible for small functions comprising of twenty to twenty five people. He purchased a car in mid October 2008 and he was dismissed in November 2008. All employees parked in the car park. The head chef told him to park elsewhere on a few occasions and he did. He got married in July 2008 and took a month off work. He did not have any problems at this time. The head chef told him that he had a problem with L. and he stated he did not have a problem with L. He did not receive a letter of dismissal but he received a P45 and a warning notice. The head chef told him that he did not have a job and the business was in a downturn and that he hoped to fire someone and that it was going to be him.

In cross-examination he stated that all the chefs worked hard and he did not have a problem with L, it was L's girlfriend who he had the problem with. He could not recall when he had a problem with the general manager but he accepted he had a problem with her. He agreed that it was not very nice to give the general manager "the finger". He had not done this before. He was told a few times not to enter the restaurant through the front door and he stated that all staff entered the restaurant through the front entrance. The doors to both entrances were ten to fifteen metres apart and he used the main entrance, as it was the short way to the restaurant. He bought his car in 2008 but he did not have a log of the car with him. He told the Tribunal he could produce this document.

In answer to questions from the Tribunal he stated that on some occasions all staff entered the premises through the front entrance. He did not receive a letter of dismissal. His employment ended on 7 November 2008, the head chef told him that he was to leave and he did not receive any documents. He stated a few waiters were let go. He did not know if L was still employed with the respondent. He obtained alternative employment the end of December 2008.

Determination

A request was made that the respondent consent to the appellant amending his TIA form to include a claim under the Unfair Dismissals Acts. The respondent refused this request. Therefore the Tribunal could only deal with the appeal under the Redundancy Payments Acts. Based on the evidence adduced at the hearing the Tribunal are satisfied that a genuine redundancy situation did not occur and therefore the appellant's appeal under the Redundancy Payments Acts, 1967 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

