

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE **-claimant**

UD774/2008
MN718/2008
RP666/2008
WT318/2008

against

EMPLOYER **-respondent**

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Mahon

Members: Mr. B. O'Carroll
Mr. J. LeCumbre

heard these claims at Athlone on 2 October
and 26 November 2009

Representation:

Claimant:

Ms. Colette Egan B.L. instructed by Ms. Karen Costello,
Byrne Carolan Cunningham Solicitors, 39/41 Mardyke Street,
Athlone, Co. Westmeath

Respondent:

Ms. Muireann McEnery, Peninsula Business Services Ireland Limited,
Unit 3 Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

The claimant, who is a Thai national, was employed from 20 May 2005 in the respondent's Thai restaurant and take-away in Athlone. Whilst the claimant asserts that, initially, she was employed as a waitress, it is common case that at all times material to this case the claimant was the manager of the restaurant. The employment was uneventful until early July 2008.

The respondent's position is that on 1 July 2008 the respondent's head chef (HC), who is the claimant's husband, told the managing director (MD) of the respondent that he was proposing to open a restaurant a Thai restaurant in Dublin with a friend of his. HC further gave six weeks' notice

and offered to find the respondent a replacement head chef. On 2 July 2008 MD's wife met both the claimant and HC's sister and both were happy to continue with the respondent. On Sunday 6 July 2008 MD received information from other staff members to the effect that HC's restaurant venture was not to be in Dublin but was to be in Athlone. MD, who was angry at hearing this, arranged to meet the claimant and HC in a local hotel that afternoon. HC verified that his restaurant venture was to be in Athlone and MD told HC that, though he felt deceived, there was nothing MD could do to stop HC going ahead. The meeting ended because MD felt too emotional about the matter. MD's wife (DW) then met the claimant on 8 July 2008 and the claimant felt awkward and said that she would resign with a finishing date of 8 August 2008. The same day HC told DW that he was now going to finish with the respondent on the same day, 8 August 2008.

The claimant's position is that HC's idea for a Thai restaurant was, at best, an aspiration and there were never any firm plans for such a venture, indeed no such restaurant exists in Athlone or anywhere else. Whilst HC denies telling MD anything about any plans on 1 July 2008 he does accept giving notice to the respondent on 8 July 2008 with a finishing date of 8 August 2008. The claimant denies ever giving notice to the respondent.

On 22 July 2008 MD wrote to the Employment Permit section of the Department of Enterprise Trade and Employment (the Department) to advise that the claimant was ceasing to work for the respondent on 27 July 2008 and enclosed a copy of the claimant's employment permit. On 24 July 2008 the claimant received a letter from the Department advising her of MD's letter and requiring the claimant to return the original of the employment permit. On receipt of this letter the claimant approached DW and MD to complain about her employment permit being revoked on foot of her employment ending on 27 July 2008. It is common case that both DW and MD apologised to the claimant, stating that it had been a mistake for the employment permit to be cancelled as and from 27 July 2008. MD wrote to the Department stating that the employment was continuing until 7 August 2008.

The respondent's position is that MD offered the claimant a bonus to stay for the remainder of the notice period but the claimant refused this offer. The claimant denies that any such offer was made. The claimant considered herself to have been dismissed and did not work after 24 July 2008. It is common case that no one from the respondent ever told her to leave the employment.

Determination

At the outset the claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn. The respondent then conceded that the claimant had an entitlement, under the Organisation of Working Time Act, to one week's pay for annual leave not taken during the employment. No evidence was considered by the Tribunal in regard to matters concerning the working hours or rest breaks of the claimant because, as provided in section 40 of the Organisation of Working Time Act, the Tribunal's jurisdiction is restricted to provisions in Part III of the Act, that is holidays.

There is a conflict of evidence between the parties in this case over the question of whether or not the claimant submitted verbal notice of resignation on or about 8 July 2008. This is a situation highlighting the need for important steps in any employment relationship to be confirmed in writing. If the claimant had put any resignation in writing or the respondent had written to the claimant to confirm their acceptance of resignation this dispute would have been avoided. Whilst there is a dispute as to when HC first tendered his resignation and about the length of notice he

gave, it is common case that on 8 July 2008 he had submitted his resignation with the intention of leaving employment on 8 August 2008. On the balance of probability the Tribunal is not satisfied that the claimant gave notice to the respondent of her intention to resign from her employment on 8 July 2008, or at any time, rather the Tribunal finds that both MD and DW assumed that the claimant would resign along with HC.

On receipt of the letter dated 23 July 2008 from the Department the claimant complained to both DW and MD and MD immediately wrote to the Department amending the date of termination to 7 August 2008. Notwithstanding this action on the part of the respondent the claimant took the view that she had been dismissed on 24 July 2008 and refused to return to work after that day. It was accepted by both parties the DW queried whether the Claimant intended to continue in her employment with the Respondent. In the circumstances of this particular case and in light of the said queries regarding the Claimant's continued employment, where confusion existed regarding the Claimant's possible departure, it was reasonable for the Claimant to consider herself dismissed on receipt of the letter from the Department. Such dismissal was not shown to have been fair. It must follow that it was unfair. However the Tribunal finds that the Claimant contributed to the situation by her haste in walking away from the employment. The Tribunal awards €2,000-00 under the Unfair Dismissals Acts, 1977 to 2007.

Loss having been established the Tribunal awards €760-00, being two weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The respondent having conceded liability the Tribunal further awards €380-00 being one week's pay under the Organisation of Working Time Act, 1997

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)