

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**claimant**

UD242/2009
MN237/2009
RP214/2009
WT91/2009

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

Members: Mr. M. Forde
Mr. D. McEvoy

heard these claims at Killarney on 10 November 2009

Representation:

Claimant: Mr. Con Casey, SIPTU, Connolly Hall,
Upper Rock Street, Killarney, Co. Kerry

Respondents: Both in person

The determination of the Tribunal was as follows:

At the outset the claim under the Unfair Dismissals Acts, 1977 to 2007 was withdrawn. The claimant was employed as a chef in the respondents' restaurant from some time in early 2004. Due to a problem the claimant encountered with a fellow employee there was a break in her service in the summer of 2004. There was a further break in service from September 2005, when the claimant went to another employment, until December 2005.

The claimant's employment with the respondents was continuous from December 2005 until 17 February 2008, which was the last day the claimant worked for the respondents. The claimant's position is that she was called to the respondents' home on that day and told that, due to the need to cut costs and the fact that she was the highest paid employee, the accountant had recommended that

the she be let go. The respondents' position is that the claimant approached them complaining about working evenings and when the respondents could not give her alternative hours she resigned and did not accede to the respondents' request to work a week's notice. The claimant had then approached the respondents for a reference, which was willingly given, for a job in a local bar, which the claimant commenced in March 2008. The claimant later obtained employment in Spain from June until mid September 2008. The respondents employed a chef to replace the claimant from February 2008 and that replacement chef was still employed by them at the time of this hearing. The claimant and the second named respondent continued to socialise together after she had left the employment.

On 14 October 2008, following her return from Spain, the claimant called to the respondents to give them a letter and asked that it be signed but as they were in the course of embarking on a journey to visit a seriously ill friend (who later died), the second named respondent asked the claimant to take the letter to their accountant, which she did. The respondents' position is that the claimant told them that the letter was to assist her (the claimant) in relation to her mortgage. The claimant's position is that at the time of this encounter, she told the respondents that the envelope contained form RP77 to claim redundancy. The respondents' evidence was that the accountant later told them that the letter was about redundancy. When the second named respondent phoned the claimant about this, she re-iterated that it was about her mortgage. The claimant's position is that she was in receipt of Social Welfare payments from 18 February 2008 until shortly after leaving for Spain in June 2008. Her position is further that her wages, for which she did not receive payslips, were made up of a combination of a cheque declared for taxation purposes and a significant cash element.

Determination

It was the uncontroverted evidence of the respondents that, after 17 February 2008, the claimant was replaced. The Tribunal accepts the evidence of the respondents that the claimant resigned on that day. In such circumstances a redundancy situation does not arise. Accordingly the claim under the Redundancy Payments Acts, 1967 to 2007 fails. Similarly, a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not arise. The evidence having shown that the claimant took no annual leave in 2008 before the employment ended the Tribunal awards her €138-24, being two days' pay, at the rate computed from the tax documents, under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)