

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE
-Claimant

CASE NO.
UD203/2009
MN203/2009

WT81/2009

against

EMPLOYER
-Respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B. L

Members: Mr D. Moore
Mr B. Byrne

heard this claim at Tullamore on 9 September 2009
and 27 January 2010

Representation:

Claimant: Mr. Gerard Groarke BL instructed by
Mr. Brian O'Meara, O'Meara & Co. Solicitors,
55 JKL Street, Edenderry, Co. Offaly.

Respondent: Ms. Siobhan Phelan BL instructed by
Mr. Micheál Corry, Con O'Leary & Co. Solicitors,
6 The Mall, Leixlip, Co. Kildare

The determination of the Tribunal was as follows: -

Dismissal was in dispute in this case and it fell to the claimant to prove the fact of dismissal

The claimant commenced employment in the respondent's fast food restaurant on 23 March 2007. His duties included preparing, cooking and serving food. He also carried out other general duties in the restaurant. The claimant's position was that he worked as many as 80 hours per week, had no written contract of employment and never received payslips. The respondent's position was that the claimant worked 39 hours per week throughout the employment, he was given a contract of

employment at the beginning of the employment and, even though he was not given payslips, he did sign payslips presented to him and kept by the wife of the managing director (DW) to acknowledge pay received. A copy of both the contract and the payslips were opened to the Tribunal, the claimant denied that the signature on the payslips was his.

The claimant complained that when he returned from three weeks annual leave towards the end of June 2008 DW told him that his hours were being reduced to 39 per week. He felt that this was due to his brother, a former employee of the respondent, opening a fast food restaurant in competition with the respondent. The managing director (MD) and DW both told him that he should discourage his brother from opening this premises.

Due to a downturn in trade, from the beginning of October 2008, the opening hours of the restaurant were reduced and, in common with the other employees, the claimant's hours were reduced, in his case to 28 per week. The claimant presented DW with a letter on 8 October 2008 in which he sought his P45 as he had "been let go since 5 October 2008 due to work being unavailable". The respondent's position is that the claimant told both DW and MD that he was going to try working in Dublin for two weeks and that the respondent was holding a position open for the claimant. For this reason the respondent did not issue the P45. The next time the respondent heard from the claimant was via his solicitor on 19 January 2009 when they received notification of these claims. The claimant's position is that DW told him that he would be contacted if there were more work available. He understood from this statement that he was being let go and he was never contacted again with the offer of further work. The claimant's brother's restaurant opened in October 2008 and the claimant's own restaurant opened in Co. Westmeath in March 2009.

Determination

The Tribunal recognises that there is a considerable degree of conflict in the evidence given by the parties on many of the issues between them. It is common case that from the beginning of October 2008 the claimant, along with other employees, had his hours of work reduced from 39 to 28 per week. The claimant interpreted this cut in his working hours along with his assumption that because his brother had opened a shop in competition with the respondent that the latter wished to remove him from employment with them. The Tribunal is satisfied that the actions of the respondent at the beginning of October 2008 did not amount to a dismissal. It follows that a claim under the Unfair Dismissals Acts, 1977 to 2007 does not arise. Similarly no claim arises under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. The evidence having shown that the claimant received in excess of his statutory entitlement to annual leave the claim under the Organisation of Working Time Act, 1997 must fail

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)