

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE E- claimant

CASE NO.
UD1365/2009

&
EMPLOYEE – claimant

UD1366/2009

against

EMPLOYER - respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr S Mahon

Members: Mr P Pierson
Ms H Henry

heard this claim at Carrick-On-Shannon on 24th February 2010

Representation:

Claimant(s): Ms Carol Ni Chormaic
Patrick Duffy, Solicitors,
Carrick-On-Shannon, Co Leitrim

Respondent(s): In person

The determination of the Tribunal was as follows:

The respondent operated a sandwich shop franchise. The respondent was represented by one of the Directors (“the Director”). The Director confirmed the details on the TIA submitted in respect of both claimants. The respondent’s business commenced in February 2007. At the time there were nine staff including two directors. The initial expectation was that the business would lose money in the first year and break even in the second year and eventually make a profit in the third year. The business did not break even in 2008 or 2009. The Director invested over €200,000 of his own money in the business.

The first named claimant was a manager. The second named claimant was a supervisor. The business was not going well and by September 2008 the Director employed the two claimants and one other lady on a full time basis. There were two occasional staff and his wife, the other

Company Director, also did occasional work.

In October 2008 the Director reduced the claimants' hours from 40 to 36 hours per week. Business was such that the Director's wife was pressing him to make the manager and supervisor positions redundant. He resisted this and wished to wait until after Christmas. A new coffee shop opened in the town and, in a casual conversation, the Director advised the staff that he would have no difficulty with them trying to get work there. He did not wish to make the staff redundant before Christmas. He was holding off to see if the Christmas business improved matters. The increase in sales did not materialise and this necessitated him in putting a further €10,000 into the business.

On the 13th of January 2009 he gave the claimants two weeks notice. Further, he gave them time off to see if there was any alternative to them being laid off. The Director gave evidence that he offered the claimants part-time employment at the same meeting as when he gave them notice. The Director gave evidence of another meeting with the two claimants when the first named claimant presented a rota whereby both claimants would work 2 to 3 days a week such as to facilitate them claiming job seekers allowance. However, the rota suggested was not acceptable as it obliged him to work 7 days a week and the other member of staff to work 6 days a week. What he needed was an employee to work 2 hours a day for 5 days a week, and another employee to work 18 hours spread over 4 days. It was a condition of the franchise agreement that the business opened 7 days a week from 7am until 10 or 11pm.

After the meeting on the 13th of January 2009 relations with the staff deteriorated. The claimants did not accept the part-time positions offered as it would impact on their ability to claim jobseekers allowance. The claimants never approached him again or asked him about the part-time positions. He did not lay them off just to avoid them acquiring a right to redundancy. He also had offered summer work to the first named claimant. Further, in order to assist them he contacted the owner of another franchise in Sligo who had a position available. He offered a temporary manager's position to the first named claimant for a six month period. However, she never reverted to him. The other employee was not in a position to take up the work as she did not have a car.

The Director was cross-examined and gave details of the names of the other employees who were laid off or left of their own volition.

It was put to the Director that he did not discuss any alternatives with them in October 2008. He did not discuss redundancy. He just discussed the fact that the business was bad. There was an acceptance that he had a discussion with them about the business having deteriorated and about them applying for positions in the coffee shop. The claimants put it to him that the processes engaged in by the Company were casual. They discussed the deterioration in the business while having a cigarette outside the restaurant. The Director did not accept this as being the only occasion where the discussion took place about the deterioration of the business.

In respect of the meeting on the 13th of January 2009 the meeting took place in the shop. The Director gave evidence that he closed the store for an hour. This was disputed by the claimants. One of the claimants continued to serve customers during the meeting. This was disputed. An issue arose as to whether or not the Director indicated that the shop was closing or if they were being laid off. The claimants representative put it to the director that the first named claimant was prepared to work part-time. This was not accepted by the Director. She further put it to the Director that no offer of part-time work was put to the second named claimant.

The claimants disputed the Director's assertions regarding the rota. They agreed that a rota was prepared by the first named claimant, but that he did not look at it. It was accepted by the claimants that the financial information had been discussed. The Director gave evidence that he had no further need for a manager and supervisor as there was, in effect, no staff to manage or supervise. What he needed was one other full-time staff member and two part-time staff. All of the full-time and part-time staffs' work would be interchangeable.

There was no dispute between the parties regarding the state of the business and the accounts of the Company.

The remaining full-time employee was called. She was not told about the shop closing. She accepted that the two claimants asked her about the shop closing.

The first named claimant gave evidence. She accepted that there had been one discussion when they had been out having a cigarette regarding the new restaurant and that the Director would have no difficulty if she was to apply for a job there. She accepted that her hours were reduced but did not think anything more about it. She was of the view that the meeting took place on the 14th of January 2009. She was told about the deterioration in the Company's finances and the business. The second named claimant was running in and out while this meeting was ongoing. She was given two weeks' notice. No alternative to redundancy was discussed. She believed that the shop was closing.

There was further contact with the Director a couple of days later. At that time she was aware that the shop was not closing. She gave evidence that she approached the Director about part-time work and also signing on. She decided to go to the Citizen's Information; it was not suggested by the Company Director. She accepted that she did out a rota but felt that he wasn't listening to her. She was adamant that there was no offer of part time work. When she saw other people working in the shop she was most surprised. She agreed that she had been contacted by the owner of another franchise in Sligo about alternative employment, but she could not take it up as she was in England.

The second named claimant also gave evidence about general discussions on the downturn in the business and about the fact that the business was not going as well. She did not take it from the conversations that her job was at risk. She never had any discussion with him about redundancy or about being laid off. The first notice she got was on the 14th of January 2009. She was devastated when she saw that the shop had not closed. She could not believe that he had lied to her and he had employed other people. He never notified her that there was a part time position available.

Both claimants gave evidence of their loss.

Determination:

The Tribunal, having considered all the evidence finds that the Director had legitimate reasons for laying off the two members of staff. He had kept them advised of the state of the business. Irrespective of whether or not the meeting took place on the 13th or 14th of January 2009 the Director of his own admission gave the two employees 2 weeks' notice and contemporaneously therewith (though it is disputed by the claimants) offered the claimants part-time work. The Director should have discussed the possibility of part-time work with the two employees prior to giving them notice. The Tribunal accepts that the Director did discuss the part-time work with the two claimants and this was borne out by the presentation of the rota. However, there was a minor technical failure on the part of the Director in not discussing with the

two employees their options within the Company prior to giving them notice. For this reason the Tribunal awards the first named claimant (ref: ud1365.09) €1,500 (one thousand, five hundred euro) and the second named claimant (ref: ud1366.09) €1,000 (one thousand euro) under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)