

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE-*appellant*

CASE NOS.
UD910/2009
RP1031/2009
MN940/2009
WT402/20009

against

EMPLOYER
– *respondent*

EMPLOYER –*respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 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: Ms. M. Levey B.L.

Members: Mr. R. Prole
Ms. M. Maher

heard this claim at Dublin on 15th March 2010

Representation:

Appellant: Mr. Ronan Flaherty of Houlihan O'Donnell Flaherty Solicitors,
105 Ranelagh Road, Ranelagh, Dublin 6

Respondent: In person

The determination of the Tribunal was as follows: -

The claim under the Unfair Dismissals Acts, 1977 to 2007, the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Organisation of Working Time Act 1997 were withdrawn at the outset.

Respondent's Case

The respondent accepted the date given on the T1A as the appellant's start date. He leaves the management of the business to the staff and his partner. The business is a guesthouse.

The appellant worked as a breakfast cook. He had a flexible arrangement with the appellant. If less than 35 guests were booked in the receptionist would phone her before 10.00pm and tell her that she was not required at work.

A significant proportion of the customers were building sub-contractors. The decline in the building industry has impacted on his business.

In October 08, there was a fire on the premises. The business stayed open but business declined. He was unaware that the appellant was no longer being put on the work rota.

He did receive the RP9 form from the appellant. He did not accept that a redundancy situation existed. However he did not complete Part C of the RP9 to confirm that he had work for the appellant. He was annoyed that the appellant served the form on him. She should have spoken to him herself. He denied that he had refused to take her phone calls. He did not contact the appellant after he received the RP9.

Appellant's Case

She worked as a breakfast cook. Initially she had worked from 7.00am until midday. Then the respondent was himself working as the night porter and he asked her to come in at 6.30am to take over from him. When she did that she finished at 11.30am.

At no stage had she an arrangement with him that she would only come in if there were more than 35 guests. The receptionist phoning her not to come in to work only became an issue in July 08. Up to that she worked 4 days a week Tuesday to Friday, this arrangement suited the assistant manager who wanted to work the other days.

In October 08 the receptionist phoned her to say they were not busy, if business picked up she would be contacted. She phoned the respondent on 22 November 08 and left a voice message. He did not reply. She phoned him again on 10 December 08, he was annoyed. She asked for a meeting. He would not meet her but he said there was no work. Later he phoned her and offered her a position as a receptionist. She did not want to do reception work and the hours did not suit her. She did not want a full time job. She got advice and sent an RP9 form to the respondent.

Determination

The Tribunal carefully considered the evidence adduced. The respondent maintained that even though his business had declined there was work for the appellant. The Tribunal find that it is significant that the respondent did not confirm the availability of work for the appellant by completing Part C of the RP9 form.

The Tribunal finds that the appellant is entitled to a redundancy lump sum based on the following information:

Date of Birth: 26 December 1930
Date Employment Began: July 1997
Date Employment Ended: 02 January 2009
Gross weekly pay: €200.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)