

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE–**Claimant**

UD1079/2009

MN1088/2009

WT482/2009

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. T. Taaffe

Members: Mr. G. Andrews  
Mr. S. O'Donnell

heard these claims at Dublin on 15 April 2010

#### **Representation:**

Claimant:

Ms. Tracy Ennis Faherty B.L. instructed by Ms Emma Meagher,  
James McSweeney Solicitors, 515 Main Street,  
Tallaght Village, Dublin 24

Respondent:

Financial Controller of the respondent

The determination of the Tribunal was as follows:

Dismissal being in dispute it fell to the claimant to prove the fact of dismissal

The claimant was employed from October 2007 as a trainee commis chef. The employment was uneventful until 15 December 2008 when the claimant attended a Christmas party for the kitchen staff.

The claimant's position is that he got home from this party at around 3-30am on 16 December 2008. He was due in work at 2-00pm that day but when he awoke at around 10-30am he was sick and unfit for work. He telephoned the respondent and spoke to a senior preparation chef (PC) and told PF of his illness and that he was going to see his GP. SC The claimant received a medical

certificate for one week by reason of gastro-enteritis. In the absence of the Executive Chef (EC) PC told the assistant head chef (AH) of the claimant's condition. The respondent's position is that the claimant was still at the party at 3-00pm on 16 December 2008, the time that EC left the party. The claimant's position is further that he telephoned the respondent on 17 December spoke to a breakfast chef (BC), again reported his illness and asked BC to get EC to phone the claimant.

The claimant again reported in by telephone during the morning of 18 December 2008 this time to the Carvery Chef. At around 5-00pm he received a call from AH to the effect that the Operations Manager was going mad and wanted the claimant out. The claimant called EC later that evening and was told that EC did not know what was happening. It was arranged that the claimant would meet EC the next day at 3-30pm.

The claimant took the medical certificate with him on 19 December 2008 and when he got to EC's office AH was also there. The claimant's position is that at this meeting EC told him that the certificate was no good as OM wants you fired. EC was at pains to stress that it was not his decision to fire the claimant but OM's. The claimant took his certificate and left considering himself to be dismissed. The respondent's position was that the claimant merely resigned.

**Determination:**

The Tribunal notes that OM was not called to give evidence in this case and that the respondent's witnesses stated that OM's opinion was that the claimant would be a thorn in the side that should be got rid of. The Tribunal is satisfied that the events, which occurred in EC's office on 19 December 2008, were such as to amount to a dismissal. The employer failed to adopt any or fair procedure and thus the dismissal was unfair. The Tribunal awards €5,600-00 under the Unfair Dismissals Acts, 1977 to 2007.

The claims under both the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were conceded and the Tribunal awards €350-00, being one week's pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and further awards €350-00, the equivalent of one week's pay, under the Organisation of Working Time Act, 1997

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)