

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE- **Appellant**

UD820/2009

against the recommendation of a Rights Commissioner R-58716-UD-07 under the Unfair Dismissals Acts in the case of

EMPLOYER-**Respondent**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

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

Members: Mr. P. Pierson  
Mr. J. Maher

heard this appeal at Tullamore on 29 January  
and at Dublin on 14 April 2010

#### **Representation:**

Appellant:

Mr. Laurence Masterson B.L. instructed by  
Mr. Conor O'Toole, Coughlan White O'Toole Solicitors,  
Moorefield Road, Newbridge, Co. Kildare

Respondent:

Mr. Gareth Hayden B.L. instructed by  
Mr. Dermot O'Brien, David Burke & Company Solicitors,  
22 Mary Street, Dungarvan, Co. Waterford on the first day  
Mr. James Burke B.L. on the second day

The determination of the Tribunal was as follows:

This appeal arose as a result of an employee (the appellant) appealing against a recommendation of a Rights Commissioner R-58716-UD-07 in the case of an employer (the respondent) under the Unfair Dismissals Acts

The appellant was employed as a hotel general manager from March 1999. He assumed responsibility for a second hotel in 2004. The employment was uneventful until 2005 when the second hotel was sold and the appellant no longer involved with it. In the spring of 2006 allegations were made against the appellant as a result of which he was suspended from duty. At the same time as these allegations were raised the appellant went on certified sick leave with stress which he

asserted was caused by bullying and intimidation at the hands of the respondent in the previous eighteen months and was exacerbated by the allegations against him. The respondent stopped paying the appellant, contrary to his contract of employment, and the appellant sought injunctive relief. On foot of this in an order of the High Court dated 6 September 2006 the respondent was ordered to pay the appellant in accordance with his contract of employment. The respondent asserted that he was fit to return to work as and from 20 September 2006. 2006 was the last year that the appellant received a P60 from the respondent.

In February 2007 the appellant was issued with a P45, which was acknowledged to be an error in a letter from the respondent on 12 March 2007. This was the last time the appellant heard from the respondent. The appellant's solicitor returned the P45 to the respondent on 26 March 2007. The appellant was still on sick leave when, in September 2007, the hotel was closed and the staff were made redundant. The appellant was not included in this process and on 4 October 2007 his solicitor wrote to the respondent's solicitor seeking details of any proposed redundancy package for the appellant. The hotel then re-opened as a hostel and, on 12 October 2007, the respondent was sold to new proprietors and new directors appointed. When the appellant contacted the Revenue Commissioners they were not aware that the February 2007 P45 had been rescinded.

**Determination:**

Whilst the respondent was represented at both days of hearing no witnesses on behalf of the respondent were present on either day. This determination is made on the uncontroverted evidence of the appellant. The Tribunal is satisfied that the appellant was entitled to consider that he had been dismissed when the ownership of the respondent changed hands. The Tribunal finds that the employer failed to adopt any or fair procedure and thus the dismissal was unfair. The Tribunal believe that the appellant should have obtained work within four months of the dismissal and awardthe appellant €48,000-00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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