

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

Employee

-claimant

CASE NO.

UD1370/2009

MN1361/2009

Against

Employer

-respondent

Employer

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Ms M. Sweeney
Mr J. Flavin

heard this claim at Tralee on 2nd June 2010

Representation:

Claimant: Ms Katie O'Connell B.L instructed by Pdraig J. O'Connell, Solicitors, Glebe Lane, Killarney, Co. Kerry

Respondent: Mr. Anthony Cooney, P J O'Driscoll & Sons, Solicitors, 41 South Main Street, Bandon, Co Cork

The determination of the Tribunal was as follows: -

The claim under the Unfair Dismissals Acts, 1977 to 2007 was one of constructive dismissal, accordingly it fell to the claimant to make his case.

Claimant's Case

The claimant commenced employment in the 33-bedroom hotel on the 19th of March 2000. The hotel was taken over by the respondent in January 2006. The claimant was the General Manager with the benefit of a company car, laptop and mobile phone. The hotel opened from March/April until October every year with occasional openings during the winter season. The claimant had a good relationship with the respondent until February 2008.

The claimant was summoned to a meeting with the respondent where he was asked to

take 'complete' ownership of the hotel to ensure it would be viable to keep open. This entailed taking on the duties of the porter, assistant chef etc and working all the hours the new duties required. The claimant worked normally until the 31st of October, which is usually the close of the season. The claimant's wages ceased to be paid in full in October. The claimant questioned the shortfall and was instructed by the respondent that he would pay the balance when the claimant submitted a yearly budget plan for the hotel. The claimant received payment in November for the October shortfall in his wages.

By December the claimant was reduced to a one-day week but still was not paid his wages. The claimant agreed to the reduction as he was under pressure financially. The respondent had said he would pay the balance of the claimant's wages to top up his Social Welfare entitlement. At a meeting on the 19th of December 2008 the respondent told the claimant that 'we all have to make sacrifices.' The claimant asked if he was being made redundant in December 2008 but was informed he was on short time.

The claimant's wages were not paid for the following months and at a meeting on the 16th of March 2009 the respondent expressed his 'surprise' that the claimant had not been paid. The respondent assumed that the claimant was taking money for his wages from the hotel income. The claimant had taken the sum of €1000.00 from the hotel takings for his December wages. Most of the payments came into the hotel by cheque or credit card and went directly into the respondent's account without the claimant having access to the income. The respondent told the claimant they would rectify the non-payment of wages when the claimant mentioned he would contact the National Employment Rights Authority.

The claimant continued to work to have the hotel ready to open on the 9th of April 2009. After the claimant's meeting with the respondent in March the claimant found it very difficult to contact the respondent. The respondent had no further interest in the claimant or the hotel. By the end of the claimant's employment he could only contact the respondent by e-mail. At this stage the claimant had not received any wages for 4 months and had to seek alternative employment. The claimant was normally paid in full when the hotel was closed for the winter season.

The respondent did not have any grievance procedures in place. On the 16th of April the claimant sent the respondent an e-mail outlining the position regarding his wages, the extent of work he was now undertaking and requesting a meeting to discuss the problems. The respondent did not contact the claimant or respond to this e-mail.

The claimant waited until Monday the 20th of April but with no contact from the respondent he left the car in the car park, and brought everything else to the respondent's bank to be locked in a safe. The claimant sent the respondent an e-mail informing him that, "*as I have not received any structured payment and have only been paid up to late December 2008 I am informing you that I can no longer work under the current circumstances.*" The claimant did not have any further contact with the respondent.

Cross Examination

The claimant did not give the respondent notice, as he would not have received payment for the one months notice required. The respondent had the hotel accounts so could not have been surprised the claimant was not paid, as there was no money removed or documented for his wages.

Respondent's Case

The respondent was not present at the hearing to offer any evidence.

Determination

Based on the uncontested evidence of the claimant the Tribunal find that the non-payment of wages entitles the claimant to terminate his contract of employment. The respondent did not avail of the opportunity to meet with the claimant by not replying to the claimant's e-mail of the 16th of April 2009. The Tribunal finds that the claim under the Unfair Dismissals Acts, 1967 to 2007 succeeds and awards the claimant €50,000.00 as compensation.

As the claimant terminated his own contract of employment the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)