

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE - claimant

CASE NO.
UD1450/2009
RP1623/2009
MN1430/2009

against

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**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. C. Corcoran BL

Members: Mr. A. O'Mara
Mr. G. Whyte

heard these claims in Dublin on 15 July 2010

Representation:

Claimant:

Mr. Liam Moloney, Moloney & Company, Solicitors,
Unit 5, Lawlor's Commercial Centre, Naas, Co. Kildare

Respondent:

No attendance or representation at the hearing

The determination of the Tribunal was as follows:-

In an opening statement at the Tribunal hearing the claimant's representative said that the claimant commenced employment at the respondent's city centre hotel on 2 May 2006. She held the post of accommodation manager and had general duties. Her salary was initially thirty-eight thousand euro per annum. In 2007 it went to forty-one thousand euro after a review.

In early 2007 the claimant saw an advertisement on the internet for an assistant general manager at the hotel. The salary was to be sixty thousand euro per annum. The claimant met the respondent's

HR manager (hereafter referred to as HM) to discuss this advertisement. The claimant was subsequently informed that she had got the position but that her salary would be fifty thousand euro per annum. This salary did not “kick in” until January 2008. The work included the accommodation manager role which the claimant had first been hired to do. Despite requests that the claimant’s appointment be confirmed this was never done by HM.

The claimant and FG were the hotel’s two assistant managers. FG had responsibility for food and beverages. The claimant had responsibility for other areas. The claimant also deputised when the general manager was absent.

In November 2008 FG was made redundant. The claimant took on some of his duties because he was not replaced.

In January 2009 MM (accommodation supervisor) was put on a “two-to-three” day week. MM, who worked under the claimant, did not take this well and sought a meeting with HM and the owner. The claimant asked if she could give one day to MM to share. MM was under financial pressure at the time. The respondent refused.

The general manager went into hospital. The claimant was asked to stand in for him and agreed to do so.

After MM had initially sought a meeting with the respondent which did not happen, MM did meet the respondent on 30 January 2009 over a number of hours. Subsequently, the claimant was called to a meeting with HM and the owner. There was no-one else at this meeting. The claimant was told that things were bad, that the respondent could not afford to pay her and to leave. There was no mention of dismissal, redundancy or lay-off at the meeting. The claimant asked who would do her job. HM said that MM would do it for a much lower salary.

At the beginning and end of March 2009 the claimant was told that there was still no work for her. Her P45 was sent to her in July 2009.

In sworn testimony the claimant said that she agreed with the facts in her representative’s opening statement. The Tribunal was told that the claimant was claiming unfair dismissal (rather than redundancy). Asked about her P45, the claimant said that she had sought it so that she “could get tax back”. The respondent sent it out at her request. The respondent was saying that she was on lay-off. She had not heard from the respondent since May 2009. She applied on the internet for jobs in hotels but got no interview. She did get a small amount of work in England where she earned about two thousand pounds. She was now on jobseeker’s allowance.

No evidence or submissions were offered at the hearing by or on behalf of the respondent.

Determination:

As the Tribunal was told that the claimant was alleging unfair dismissal, the claim lodged under the Redundancy Payments Acts, 1967 to 2007, falls for want of prosecution.

Having considered the case made for the claimant’s side and the lack of opposition by the

respondent at the Tribunal hearing specifically scheduled for both sides to contest the matter, the Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds. In all the circumstances, the Tribunal finds compensation to be the appropriate redress to award and orders that the respondent pay the claimant the sum of €48,000.00 (forty-eight thousand euro) under the said legislation.

In addition, the Tribunal finds that the claim lodged under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, succeeds. Accordingly, the Tribunal awards the claimant the sum of €1,760.00 (one thousand seven hundred and sixty euro) under the said legislation (this amount being equivalent to two weeks' gross pay at €890.00 per week).

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)