

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - *claimant*

CASE NO.
MN1100/2010
UD1612/2009

WT728/2009

against

EMPLOYER – *respondent No 1.*

EMPLOYER – *respondent No 2*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Fahy BL

Members: Mr. D. Morrison
Mr T. Gill

heard this claim at Castlebar on 2nd November 2010

Representation:

Claimant(s) : Ms. Susan Jones BL instructed by Ms Noleen Geraghty, Mark Cooney,
Solicitors, 5 Garden Vale, Athlone, Co Westmeath

Respondent(s) : No appearance by or on behalf of respondent

Preliminary Point

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 was withdrawn by the claimant's representative at the commencement of the hearing.

Claimant's Case

The claimant gave direct sworn evidence that she commenced working for the first named respondent in September 2007. She continued working until 5 July 2009 when the restaurant closed. The restaurant re-opened two weeks later with a new owner. The new owners did not contact her informing her that they had taken over the business. She called to the restaurant seeking work when it re-opened but was informed that there was no work available for her. During her time working in the restaurant she only received one week paid holidays. She did not receive any extra payment when she worked on public holidays in the restaurant. Documentary evidence was produced to the Tribunal showing the claimant's gross weekly wage as €394.50.

The first and second named respondents were not present at the hearing. Accordingly no evidence was adduced in respect of the respondents.

Determination

The Tribunal determines that there was a transfer of undertakings from the first named respondent to the second named respondent and finds that the second named respondent is the correct employer for the purposes of this determination. The Tribunal is satisfied that the second named respondent failed to notify the claimant of the transfer in accordance with the EC (Protection of Employees on Transfer of Undertakings) Regulations 2003.

Having heard the claimant's uncontested evidence the Tribunal is satisfied that she was unfairly dismissed. Accordingly the Tribunal awards the claimant the sum of €1578.00 against the second named respondent under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal also awards the claimant the sum of €2524.80 against the second named respondent under the Organisation of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

