

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
EMPLOYEE - appellant

CASE NO.  
RP492/2010  
MN275/2010  
WT683/2010

against

EMPLOYER - respondent

under

**REDUNDANCY PAYMENTS ACTS, 1967 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. E. Harrington

Members: Mr. P. Casey  
Ms. H. Kelleher

heard this appeal in Cork on 7 September 2010

Representation:

\_\_\_\_\_

Appellant :

No legal or trade union representation

Respondent :

No legal representation extant at date of issue of determination

The decision of the Tribunal was as follows:-

**Appellant's Case**

Evidence was given by the Appellant and a former co-worker, JOL.

The Appellant told the Tribunal that he commenced employment on 30<sup>th</sup> June 1975 as a chef in a restaurant business in Cork City.

He confirmed to the Tribunal that he was notified by his employer in November 2009 of his employer's intention to lease out the employer's restaurant business to the Respondent.

The Respondent further informed the Tribunal that at the time of the proposed transfer he had been working from the hours of 9.00am to 5.00pm.

He said that, in advance of the proposed transfer date, he met the Respondent who informed him of the Respondent's intention to commence work at 7.00am. The Appellant said he informed the Respondent that he would not be in a position to commence work at 7.00am as this would require him to arise from bed at 4.30am with a view to travelling a distance from his home to Cork city.

In cross examination, Appellant confirmed that he had seen a letter of 9<sup>th</sup> November 2009 issued by his employer prior to transfer in which it was stated that his employment "will be continuous thus protecting your employment, holiday, sickness and all other terms and conditions of your employment and affording you the security that your services are under the legislation".

In cross-examination, the Appellant disagreed with the assertion made on behalf of the Respondent that there was never any discussion about commencing work at 7.00am.

In cross examination, the Appellant disagreed with the assertion made on behalf of the Respondent that he had been contacted by the Respondent following his failure to attend work on the date on the commencement date, that he had agreed to attend the following Saturday and failed to do so, or that he had received a telephone text message asking him to call the Respondent.

JOL gave evidence of having left employment in the restaurant prior to the transfer taking place. He confirmed he had not been present when the Respondent and the Appellant had met.

### **Respondent's Case**

Evidence was given on behalf of the Respondent and by his daughter, JOH.

JOH said that, in advance of the transfer, she and the Respondent attended a meeting which was attended by all staff including the Appellant. JOH said that at that meeting the Respondent informed all staff that there would be no changes in rosters without staff agreement. She stated that the Appellant did not raise any issue at the meeting. She said that there was no mention of a start time of 7 am.

JOH stated that when the restaurant re-opened (on Thursday 26<sup>th</sup> November 2009), the Appellant did not attend for work. She contacted him, acknowledging that there may have been doubt as to the precise date on which the premises would re-open. She stated that the Appellant informed her that he had not thought the restaurant would open on that date, that he was in Dublin and accordingly not available the following day, but that he would attend on Saturday. She said he did not attend on the Saturday and did not take her phone-call or respond to a text message.

JOH stated that when the Respondent commenced business it continued to trade from 9.00am and did not change until an earlier commencement time of 7.30am until the following late February/March 2010. JOH said that the Respondent was always looking for chefs and would

provide employment to the Appellant if he wished.

In cross examination, the Respondent's daughter accepted that there may be some error on her part as to the precise dates on which the Respondent commenced its business, but she remained adamant that there was never any mention of commencing business at 7.00am and she said in fact no discussion took place with the Appellant specifically. JOH acknowledged that there may be some error on her part as to the precise dates on which the Respondent commenced business, but she remained adamant that there was never any mention of commencing business at 7.00am and she said in fact no discussion took place with the Appellant specifically.

In cross examination, the Respondent's daughter accepted that a local newspaper contained a brief article concerning opening before 9am, but she said that this article was not published in 2009 but rather some months later. No evidence was available from the Appellant as to the precise date of publication.

The Respondent confirmed the evidence given by JOH and said he had no interaction whatsoever with the Appellant as an individual.

In cross-examination, the Respondent disputed the Appellant's assertion that a full discussion had taken place between the parties.

## **Determination**

The Tribunal dismisses the appeals under the Redundancy Payments Acts, 1967 to 2007, and the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Having heard all the evidence, the Tribunal is not satisfied that the Respondent sought to vary the Appellant's hours of employment. The Tribunal is satisfied that a redundancy did not arise in the Respondent business and accordingly the appeal fails. The claimant is not entitled to compensation under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Under the Organisation of Working Time Act, 1997, the Tribunal dismisses the claim lodged (for outstanding holiday pay) on the grounds that it was not established that this Respondent had any

liability under the said legislation in respect of the claimant.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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