

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE

*claimant*

WT937/2009

UD2229/2009

Against

EMPLOYER

*respondent*

under

### ORGANISATION OF WORKING TIME ACT, 1997 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr D. Moore  
Mr T. Brady

heard this claim at Dublin on 14th January 2011

Representation:

Claimant(s): Ms. Claire Ledwith BL instructed by Ms. Stephanie Tierney, Sheridan  
Quinn, Solicitors, 29 Upper Mount Street, Dublin 2

Respondent(s): XXXXXXXXXXXX

The determination of the Tribunal was as follows:-

The claim under the Organisation of working Time Act, 1997 was withdrawn during the hearing.

#### **Respondent's Case**

RB told the Tribunal that he was general manager of the complex, which comprised an Inn and a Hotel. In 2008/2009 he was general manager of the Inn. The hotel and inn were managed separately in competition with each other and employed their own staff. They traded under two company names. The business sustained substantial losses in 2008. Due to a downturn in 2008 he was asked by the board of directors to implement staff cuts and save energy. Staff were asked to take cuts in January 2009. He looked at the rosters and endeavoured to get the best from the staff. The roster was changed in the kitchen and part time staff were let go from January to May. One chef left in December 2008 and an upstairs restaurant was closed in August 2008. CW was the head chef and the claimant who was a sous chef reported to her. He asked the claimant if she could

work three nights a week and they agreed that she would work two nights. The claimant only wanted to work one night and two nights was the compromise. He wanted to discontinue employing part time staff at night. He asked staff would they give an extra ten percent and they agreed to work a forty-four hour week and were paid for forty hours.

The claimant was previously employed with the respondent in 2005. She left in August 2007 to take up a position with another company and she returned to the respondent in October 2007. He had no problem with the claimant's work. He had to let a manager go in 2009. He was asked to manage both the hotel and the Inn in April 2009. He commenced in the hotel on a trial basis for six months to establish if he could manage both the hotel and the inn. He told the claimant on 1 April 2009 that he could not retain her in employment. He gave her one week's notice, which was extended to two weeks. The claimant called the next day to inform him that she was ill. The claimant did not work her notice period.

He took on chefs in November of 2009 for the Christmas period, one full time and two part timers. The position of sous chef was not filled. He had to establish how the hotel was managed and he had to reduce staff numbers. A position was in place in the hotel in the fine dining area for five nights. He did not offer the claimant that position and the claimant had never worked in this area. On occasion the claimant worked in the restaurant but in a four star hotel it was a different role completely. He was not aware when he commenced managing the hotel that this position was going to become available. The claimant did not contact him after she left and she did not contact him before Christmas 2009.

In cross-examination he stated that he did not organise rosters. He did not have a dispute with the claimant about working nights. He let ten staff go between January to May 2009. Two students who were taken on were allowed to work a forty-hour week during their holidays. The claimant was asked to work nights so that the respondent could reduce the number of part time staff. The claimant and the head chef worked together a couple of days a week. He did not tell the claimant that he would check other hotels in the group to see if there was a job for her. As far as he could recall the claimant did not give him possible options she thought were available. The claimant's position was not replaced.

CW told the Tribunal that she was head chef in the Inn. She commenced employment in 1989 as a chef de parte and worked her way up to position of head chef. The sous chef acted as deputy head chef when the head chef was absent. The chef de parte was a senior chef in charge of an area. The commis chef worked on starters and soups. An upstairs restaurant closed in 2008 due to the downturn in business. She organised the rosters and if she was on holidays the claimant organised them. The claimant left the respondent in 2007 as she had got a better offer. This job did not work out and she told her that there was a job in the respondent for her. She was happy to take her back and they worked well together. When the claimant returned to work she worked one night a week. The general manager asked the claimant to work three nights and she agreed to do two nights. The rosters differed every week and it depended on the function that was on. After the claimant left she did not contact her but she telephoned her to see how she was.

In cross examination she stated that in January 2009 the general manager asked the claimant to work more nights and the claimant agreed to work two nights. She disagreed that the claimant had every Wednesday off.

## **Claimant's Case**

The claimant told the Tribunal that she commenced employment with the respondent in 2005 as a sous chef and she reported to the head chef. She earned €18 per hour. In 2008 she did not encounter any problems at work and she worked the 10 to 6 shift. She made it clear to the respondent that she had her own business. In November/December 2008 the general manager asked her would she work one night a week, which was Friday, and she agreed to do this. She had no further discussion with the general manager regarding this. On January 6 2009 the general manager asked her to a meeting. He told her that he needed her to work three nights a week and she told him that other chefs were not doing this. He told her he wanted to let part time staff go due to the downturn. She told him she would work two nights a week and she would work four days instead of five.

A couple of days later she looked at the rosters. If she worked three nights a week the other full time staff could not work nights. The general manager told her that he needed to let part time staff go and she stated that no part timers were let go. Daytime staff were given her daytime shift. She got the impression that the respondent wanted her out. The general manager and the head chef had a good working relationship. In January 2009 she had requested to work Tuesday and Thursday nights. If a staff member came to her to change the roster it would be her job to do so. She felt the relationship with the respondent was breaking down.

On 1 April 2009 the general manager called her to his office at 4p.m. and told her that due to the downturn he had to let her go. She told him that she had agreed to cut back on hours. He told her that her employment was being terminated the next week and she was given a date to finish. He told her there was no position available in the respondent group and that the chef in the hotel was on a two-day week. Two college students were employed for more than twenty hours and prior to her employment being terminated they worked thirty five to forty hours. Both were supposed to be rostered for twenty hours.

After she was dismissed she applied for various jobs. She attended a PC course and has been unable to seek alternative employment.

In cross-examination she stated that she and the head chef had a very good working relationship. She had no problems with the general manager until January 2009 when things happened. Prior to commencing employment with the respondent she had her own business and she worked day and night. She sought a part time job with the respondent and was asked could she take on the sous chef job. She did not contact the respondent prior to Christmas 2009 to look for work.

## **Determination**

The Tribunal accepts that a legitimate redundancy situation existed in the respondent company in spring of 2009. The turnover had fallen significantly. The respondent closed an upstairs restaurant letting go its chef and part time staff.

In the restaurant the basic size of servings were reduced as were a number of part time staff. Ultimately the respondent required a redundancy and on the basis of LIFFO the claimant's employment had to be terminated.

In relation to the fairness or otherwise of the process used the claimant had concerns about being rostered for what she believed was an unfair number of night shifts. The Tribunal does not accept that this issue had a material bearing on the approach taken by the respondent to the necessity of

saving costs. The Tribunal cannot identify any significant shortcoming with the manner in which the redundancy was implemented. The claim under the Unfair Dismissals Acts, 1977 to 2009 fails.

The claim under the Organisation of Working Time Act, 1997 was withdrawn during the hearing and no award is being made under this Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

