

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD1666/2009
RP1871/2009

MN1627/2009

-claimant

WT698/2009

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
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T. Gill
Mr F. Dorgan

heard this claim at Ennis on 23rd June 2010

Representation:

Claimant: Carmody & Company, Solicitors,
Peach House, Shannon, Co.Clare

Respondent: Mr. Gearóid Howard, Crimmins
Howard, Solicitors, Dolmen House, Shannon,
Co Clare

Background:

As the fact of dismissal is in dispute, the Tribunal heard evidence firstly from the claimant and then the respondent. The respondent is a hotel incorporated with limited liability. The claimant worked in the nightclub in the hotel.

As the hotel and hotel nightclub were being renovated for a short period, the hotel and nightclub were closed for differing periods. The claimant contends that she was not taken back to work after the renovations and thereby maintains she was dismissed.

The claimant told the Tribunal that she got no notice of lay off: she called to the hotel and left messages with the receptionist for the manager to contact her and there was no response. She was told by her supervisor that there was no work for her. She called to the hotel four or five times and left her name and number with the receptionist.

The Tribunal heard that the respondent was renovating the hotel/ nightclub from January to June 2009. The main nightclub, which held 1200 people, was closed in January 2009. The smaller nightclub, which held 400 people, was open until June. The claimant worked in the smaller

nightclub. The claimant was rostered to work whilst the main nightclub was closed. The claimant was employed in the small nightclub from January to June. The hotel closed for two to three weeks.

The manager gave the receptionist a list of names to contact by phone and the claimant's name was on the list. The orientation day was in the local paper and on the radio. He explained during cross-examination that he told the staff that the smaller club would close for two to three weeks and that they should watch out in the local papers for news of the re-opening/ orientation meeting.

Determination:

The claim under the Redundancy Payments Acts, 1967 to 2007, was withdrawn.

The claim under the Minimum notice and Terms of Employment Acts, 1973 to 2005, was withdrawn.

The claim under the Organisation of Working Time Act, 1997, was withdrawn.

Having heard the claimant's evidence the Tribunal unanimously determines that the claim under the Unfair Dismissals Acts 1977 to 2007, fails. There was a patent conflict in evidence between the parties as to whether the claimant was offered her job back. The Tribunal prefers the evidence that the claimant was offered her job on more than one occasion and did not take up the offer. The totality of the claimant's evidence does not establish that she was unfairly dismissed. The claimant has not identified any of the exclusion clauses as set out in the Act and has not established that her dismissal results wholly or mainly from the matters set out in Section 6 (2) (f) of the Act:

2. —(1) This Act shall not apply in relation to any of the following persons:

- [GA] (a) an employee (other than a person referred to in [section 4](#) of this Act) who is dismissed, who, at the date of his dismissal, had less than one year's continuous service with the employer who dismissed him and whose dismissal does not result wholly or mainly from the matters referred to in [section 6](#) (2) (f) of this Act,

- [GA] (b) an employee who is dismissed and who, on or before the date of his dismissal, had reached the normal retiring age for employees of the same employer in similar employment or who on that date was a person to whom by reason of his age the Redundancy Payments Acts, 1967 to 1973, did not apply,

In the unanimous view of the Tribunal the claim under the Unfair Dismissals Acts 1977 to 2007, is unmeritorious and must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)