

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE –*Claimant*

CASE NO.
UD2380/2009
MN2202/2009

against
EMPLOYER –*Respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms F. Crawford B.L.

Members: Mr E. Handley
Mr D. Thomas

heard this claim at Dublin on 11th February 2011

Representation:

Claimant: Ms Claire Dennehy, Lucan C I C, Ballyowen Castle Community Centre, Ballyowen Shopping Centre, Lucan, Co Dublin

Respondent: In Person

The determination of the Tribunal was as follows:

The respondent operates a public house within which the claimant was employed as a waitress.

Respondent's Case:

The respondent gave evidence that the claimant was aware for some time that business had decreased due to an alteration of the access road to the premises. At the time of May 2009, the respondent employed 26 employees but since then many employees have left his employment and have not been replaced and others were made redundant. A list of these employees was submitted to the Tribunal. Currently, he employs ten staff and he works seven days per week. Two employees currently work as waitresses. Both of them were employed prior to the claimant.

During cross-examination it was put to the respondent that the claimant was not given prior notice that her position might be selected for redundancy. The respondent stated that prior to the claimant's position being made redundant he had offered her the option of accepting lower wages or reduced working hours but the claimant was not interested in either of these options.

It was put to the respondent that the claimant had not been paid the relevant minimum notice entitlements. The respondent stated that the claimant was paid for eleven hours notice, as that was all he could afford to pay her. The claimant was also paid one week's holidays.

In reply to questions from the Tribunal, the respondent confirmed that he had to make a series of redundancies. He stated that he has procedures in place but he did not apply them. However, he did inform the claimant that her failure to consider other options could lead to the loss of her position.

Claimant's Case:

The claimant gave evidence that she was told to attend at the office on 15 May 2009. The respondent informed her that her position was redundant and handed her a P45. It was a shock to the claimant as there had been no prior discussions. She refuted that the respondent had discussed reduced working hours or a lesser rate of pay with her prior to this date.

The claimant believed she was replaced in her position with the respondent. The claimant stated that the eleven hours extra pay she received in her final payslip related to hours owed and was not part-payment for minimum notice.

The claimant gave evidence pertaining to loss.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing and is satisfied from the evidence presented that a genuine redundancy situation existed in relation to the termination of the claimant's employment. However, it is clear from the evidence, as well as being accepted by the respondent, that there were no procedures applied in selecting and communicating that redundancy to the claimant and in such circumstances the dismissal of the claimant must be deemed unfair.

In considering the appropriate sum of compensation the Tribunal was cognisant that the majority of staff were made redundant, or departed the respondent's employment and not replaced, in the months following the termination of the claimant's employment. The Tribunal finds the appropriate remedy to be compensation in the sum of €3,750 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal also finds that the claimant is entitled to the sum of €406.85 being the equivalent of one week's gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)