

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE - *appellant*

CASE NO.

RP2689/2009

UD2346/2009

MN2180/2009

WT999/2009

Against

respondents

EMPLOYER

EMPLOYER

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr G. Andrews

Ms H. Murphy

heard this claim at Galway on 5th April 2011

Representation:

Claimant(s) : Mr Conor Glendon, Conor J Glendon & Co, Solicitors, Ard Na
Gréine, Clonroadmore, Ennis, Co Clare

Respondent(s) : Frank McDonagh & Co, Chartered Accountants & Auditors,
Shangort, Galway

Determination

The Tribunal heard evidence from the claimant that he was recruited to work in Ireland by a brother of the first named respondent. He paid a fee of approximately €9000 to be supplied with a work permit and airline tickets from Bangladesh to Ireland. On arrival in Ireland he was greeted at the

airport by the first named respondent and proceeded to work under his direction in various restaurants. At all times the first named respondent was his boss and obtained work permits for him in the names of various legal entities operating the first named respondent's restaurants. While there was no difficulty with the claimant's work, some tensions did arise when the company who had applied for the claimant's work permit was dissolved and the claimant was anxious that a fresh work permit be obtained so that he could continue to work legally.

The claimant at this stage was working under the first named respondent's direction in a restaurant in Moycullen, Co. Galway. The manager in that restaurant confirmed to the Tribunal that he was telephoned by the first named respondent in March 2009 with an instruction to tell the claimant that his new work permit had now issued. He was also told to let the claimant go. He said he told the claimant this, he was finished and to leave now. That night he drove the claimant to another restaurant owned by the first named respondent to collect his work permit. When the claimant got the work permit he said to him 'you can tell the boss I'm quitting now'. He confirmed that the catering industry employment regulation order (ERO) was applied to the workers in the restaurants he managed and that the rates of pay set out in the ERO were paid to all employees including the claimant. He also confirmed that the claimant was employed as a tandoori chef.

The Tribunal is satisfied that the claimant's employer was the first named respondent, the claimant was dismissed and this dismissal was unfair. Having determined that the appropriate remedy is compensation the Tribunal, taking into account the claimant's efforts to mitigate his loss and the fact that he was out of the country and unavailable for work from 12 May 2009 until August 2009 awards compensation in the sum of €16,500.00 under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal is also satisfied that the claimant did not receive his full holiday and public holiday entitlements under the Organisation of Working Time Act 1997 and awards the claimant compensation in the sum of €2,200.00 under the said Act.

Furthermore the Tribunal awards the claimant the sum of €1516.76 being the equivalent of four weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005. In this regard the Tribunal noted the Manager's evidence as to wages and has calculated the minimum notice award based on the relevant wage rate of €379.19 per week.

The claim under the Redundancy Payments Acts 1967 to 2007 fails and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

