

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER

- appellant

UD1197/10
PW156/10

against the recommendation and the decision of the Rights Commissioner
in the case of:

EMPLOYEE

- respondent

under

**PAYMENT OF WAGES ACT, 1991
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr J. Flanagan
Ms. N. Greene

heard this appeal at Naas on 4th May 2011.

Representation:

Appellant: In person

Respondent: In person

The determination of the Tribunal was as follows:-

This case came before the Tribunal where the employer was appealing against the Rights Commissioner's Recommendation ref. r-076753-ud-09/EH and also the Rights Commissioner's Decision ref. r-076755-pw-09/EH

At the outset of the hearing the appeal under the Payment of Wages, Act, 1991, ref. R-076755-pw-09/EH was withdrawn.

Appellant's Case:

The appellant runs a hotel/hostel for asylum seekers. JG is company director.

The respondent commenced employment on 26th January 2008 and was put on the roster from 29th January 2008. The respondent worked a 36 hr per week, which comprised of three 12-hour shifts every Tuesday, Wednesday and Thursday.

Prior to and again on 14th January 2009 JG discussed with the respondent KM's return to work following her maternity leave. KM went on maternity leave towards the end of April 2008. There was enough work for both KM and the respondent. The respondent said she was only working three days and did not wish to change her hours of work. She walked out at approximately 7.30 pm that evening. Her shift was due to finish at 8.00 pm. There was no contact from the respondent between 14 January 2009 and 22 January 2009.

On 22nd January 2009 JG telephoned the hotel seeking contact details for the respondent. He subsequently spoke to her and she agreed to meet him the following Thursday. He subsequently received a telephone call from the respondent saying she was not willing to meet him.

He telephoned KM and told her that he thought the respondent was not returning to work.

The company has procedures in place and the respondent never aired any grievances. The respondent was never dismissed and her job is still available.

Respondent's Case:

Following the respondent's redundancy from a job in Carlow, she was approached by KM asking her if was interested in working for the appellant in the hotel/hostel in Kildare. She commenced working in the hotel in or around 15 January 2008. She worked three 12-hour shifts, every Tuesday, Wednesday and Thursday at the reception desk.

She never missed a day at work and was never late.

She was not paid for three public holidays and queried this with KM. She was told she was not entitled to payment in respect of these days. KM had returned from maternity leave in October/November 2008 and worked Mondays and Fridays. The respondent spoke to JG's wife who told her that KM was going to be working Monday to Friday, as her husband had no work. The respondent was offered Saturday and Sunday evening work instead.

On 22nd January 2009 JG arrived at the hotel and left three cheques on the counter for her, which were in respect of payment for the public holidays and a week's notice pay. She was told to take her cheques and go. She left at 7.10 that evening. Her shift was due to finish at 8.00 pm.

The appellant never furnished her with a P60 or a P45. She has not secured work since the termination of her employment.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. Clearly, there is a conflict of evidence on all aspects. However, the respondent had documentary evidence to corroborate her oral evidence while the appellant did not have. The Tribunal prefers the respondent's evidence.

The Tribunal notes that no fair procedures were applied and the respondent was summarily and unfairly dismissed.

The Tribunal varies the Rights Commissioner's Recommendation and awards the respondent €10,000 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)