

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE

*-Appellant*

CASE NO.

RP2889/2010

against  
EMPLOYER

*-Respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. J. Reid  
Mr P. Trehy

heard this appeal at Dublin on 16th June 2011

#### **Representation:**

Appellant: In Person

Respondent: A director of the company

#### **The decision of the Tribunal was as follows:**

The respondent company operated a restaurant. A director of the company gave evidence that the appellant was employed there as a kitchen porter from the time of July 2007. However, in November 2009 the appellant resigned from his employment to start his own business. The appellant worked his last shift as a kitchen porter on 22<sup>nd</sup> November 2009. As a result the director employed two part-time kitchen porters to cover the busy Christmas period.

The director stated that the appellant had been a fantastic employee and for this reason, after he had resigned, she offered the appellant some casual bar shifts which he accepted. Payslips for a number of weeks were opened to the Tribunal. The director stated that the payslips reflected the casual shifts the appellant worked during January 2010. The restaurant subsequently closed during February 2010. The director explained that as the company had a part-time accounts clerk there was a delay in preparing the appellant's P45 and for this reason it stated the appellant's date of leaving as 19<sup>th</sup> February 2010.

The directors set up a new business around that time and all of the floor staff were transferred from the respondent company to the new business. However, four senior staff members were made redundant at that time. The appellant was made an offer of work with the new business but he did

not accept this offer. The director stated that she regularly telephoned the appellant throughout the year with an offer of work.

The appellant refuted that he had resigned from his employment in November 2009 but confirmed that he had set up a business around that time on a trial basis as he had not been receiving enough shifts from the respondent company and he had a family to take care of. The director had promoted him to bar tender around the time of November 2009 but he was receiving fewer hours in this role. The appellant stated that the last shift he had worked for the respondent company was on 24<sup>th</sup> January 2010.

It was the appellant's case that his employment did not terminate until 19<sup>th</sup> February 2010 when the restaurant closed and for this reason he believed he was entitled to a redundancy payment.

**Determination:**

The Tribunal is satisfied from the verbal and documentary evidence adduced that the appellant resigned from his employment in November 2009 to set up his own business and that the shifts he worked for the respondent company after that time were clearly on a casual basis. The appellant was free to accept or reject these offers of work. The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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