

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE

MN401/2010

UD434/2010

WT184/2010

against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Taaffe  
Members: Mr. N. Ormond  
Mr. F. Barry

heard this claim at Dublin on 29th July 2011

Representation:

Claimant:

Mr Marc Bairead, O'Shaughnessy,  
Solicitors, First Floor, No. 1 Fr McWey Street, Edenderry, Co Offaly

Respondent:

No appearance by or on behalf of the respondent

There was no appearance by or on behalf of the respondent and the Tribunal is satisfied that they were properly notified of the hearing. The representative for the claimant informed the Tribunal that he had been in contact with the Liquidator of the respondent and was informed that the Liquidator would not be present at the hearing.

### **Claimant's case**

The claimant commenced employment with the respondent on 5<sup>th</sup> July 2006 and was dismissed on 28<sup>th</sup> July 2009. Initially he worked as a waiter but was subsequently promoted to manager and earned €500.00 per week at the time of his dismissal. The claimant never received a contract of employment or pay slips from the respondent.

In August 2008 the respondent asked the claimant to invest €50,000.00 in the business in return for

a share in the profits. The claimant agreed and subsequently handed the then owner (J.C.) €50,000.00. However, in spite of the claimant asking for such, no papers were ever drawn up in relation to this deal.

After approximately one year the claimant sought legal advice. He also asked J.C. what he was going to do about the money and said he was going to sue him. J.C. told the claimant to f—k off and to give him the keys.

On 28<sup>th</sup> July 2009, Having waited outside J.C.'s house for 2-3 hours in an effort to meet him, the claimant sent a text to J.C. informing him that he was going to the restaurant in order that his children could use the toilet. On coming out of the toilet he was met by J.C. who asked him what he was doing there and told him he was going to call the gardai and after a few minutes J.C. and his uncle began to beat the claimant. After the claimant left the restaurant he went to hospital because he had been injured. The claimant never returned to work after that and regarded himself as having been dismissed. Soon after that the respondent went into liquidation.

The claimant received no holiday pay during the period of his employment with the respondent, nor was he paid any premium for any, except three, bank holidays. The claimant was not given any notice of dismissal, nor was he paid in lieu of such notice. As far as the claimant could recall he worked every Sunday during his employment but never received a Sunday Premium.

### **Determination**

Having considered the uncontested evidence of the claimant the Tribunal finds that he was unfairly dismissed. In making an award the Tribunal is satisfied that the claimant earned €500.00 gross per week and taking into account his efforts to mitigate his loss awards him €24,900.00 under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal also awards the claimant €2,000.00 in respect of holidays and €2,400.00 in respect of bank holidays under the Organisation Of Working Time Act, 1997.

Furthermore the Tribunal awards the claimant €1,000.00 in respect of minimum notice under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005.

The claimant gave evidence in relation to non-payment of a Sunday premium but the Tribunal has no jurisdiction to make an award in relation to this matter.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

