EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:	**CASE NO.**
EMPLOYEE - appellant	RP1662/09 MN1474/09

Against

EMPLOYER - respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr P. Pierce
Mr J. Flannery

heard this appeal at Naas on 15th November 2010 and 27th September 2011.

Representation:

Appellant: In person

Respondent: Mr. Micheal Corry, Con O'Leary & Co., Solicitors, 6 The Mall, Leixlip, Co. Kildare

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant commenced employment on 28th November 2002 as a pastry commis chef. She worked 40 to 60 hours per week. Her maternity leave commenced on 21st May 2007 and she was due back at work on 17th November 2007. She applied for unpaid maternity leave and was due back on 12th March 2008.

In mid February 2008 the appellant applied for a further three months unpaid leave. There was agreement that the appellant would return on 15th June 2008. On 15th June 2008 the appellant telephoned the office and asked when should she return to work. Her understanding was that she would be telephoned with the exact date when she should return to work.

Several days later she received a call from the respondent (PM) and called to the office. She was

told that she would only be given 15 hours per week. She was expecting to return to full time work. She felt she had to agree to those part time hours, as she had no choice. She never made a complaint about her reduced working hours. Her husband took care of her baby when she returned to work.

She recommenced employment on 4th July 2008 on a salary of €150.00 per week. The roster was different every week. Sometimes she got 10 hours per week and sometimes 5 hours per week. She worked weekends and was happy doing so. At no stage did she ask to work Mondays and Tuesdays.

For 5 weeks she got 15 hours per week. On 15th September 2008 she telephoned the office to find out her roster for the following week but it was not ready. She then spoke to C who said that her name was not on the roster. She called to the office and spoke to PM. She enquired why her name was not on the roster and was told there was no work for her. PM said he had nothing to offer and could not promise any work. At no stage did PM intimate to her that alternative work might be available in a restaurant, which he had leased. She was confused. She did not work for the respondent after that.

She received her P45 around October/November 2008. The respondent signed a HSE letter for her on 20th October 2008, which cited that her employment ceased on 13th September 2008 due to a slowdown in business.

The appellant sought a reference from the respondent in September 2008. PM told her that the Manager (B) would write her a letter and give her a reference. She received that reference on 13th October 2008.

On 20 October 2008 the appellant sought a redundancy payment. Her understanding at that time was that PM did not want to pay her. She was in shock that the respondent refused to pay her a redundancy payment.

The appellant has not secured work since the termination of her employment.

Respondent's Case:

PM initially set up in business as a sole trader. He owned a restaurant. He subsequently set up a limited company and employees transferred to that company. The appellant commenced employment as a pastry commis chef on 28th November 2002. As she was a non-EEA national PM secured a work permit for her each year. The final work permit was valid for an unlimited period.

He had a good working relationship with the appellant. The appellant applied for her standard maternity leave of 26 weeks and a further 16 weeks unpaid leave in May 2007. He envisaged she would return to full time work in November 2007 and secured a work permit for her from then on.

In around Christmas 2007 the appellant contacted him and asked to extend her maternity leave till February/March 2008 and PM duly agreed to this. PM heard from other employees that she had returned home.

In June 2008 the appellant telephoned him and said she wished to return to work. He asked her to call into the restaurant and have a chat. The appellant told him that she could only work Fridays and Saturdays. He agreed to facilitate her as she had been a good employee. She said she had a

problem with childcare. PM's understanding at the time was that the appellant's husband was working when she returned to work.

On 13th September 2008 the appellant told PM she could no longer work Fridays and Saturdays and not to bother putting her on the roster for Fridays and Saturdays but wanted to work Mondays and Tuesdays instead. PM could not facilitate her. There were ongoing discussions. PM wanted to try and help the appellant. He spoke to employee (D) who worked on Mondays and Tuesdays but D wished to remain working on Mondays and Tuesdays. PM told the appellant that the roster days were still available to her. He also told her that she try and secure alternative work in a restaurant he had leased closeby.

PM contended that the appellant left of her own accord, as he could not facilitate her in her request to work Mondays and Tuesdays only.

PM asked B to type up a reference for the appellant and this was done on 13th October 2008.

On 20th October 2008 the appellant asked PM for her redundancy payment. He told her that she had left her employment of her accord and that he could not give her a redundancy payment. He did not force the appellant to leave.

The appellant's P45 issued to her in October/November 2008.

Determination:

The Tribunal carefully considered all of the evidence adduced. For the sake of clarity it is confirmed that the respondent withdrew in the course of the hearing his claim that a break in service had taken place which would have disentitled the appellant from pursuing her appeal.

In essence the dispute between the parties centred on contact between them over a three day period in September 2008 which culminated in the relationship between the parties breaking down irretrievably. Having considered the evidence in respect of this contact the Tribunal is not satisfiedthat the appellant was either laid off or that her employment was terminated by the respondent. Ittherefore finds and determines that a claim for redundancy does not arise and consequently that theappellant's appeal fails under the Redundancy Payments Acts, 1967 to 2007. Since it is found thatno redundancy took place the claim for minimum notice under the Minimum Notice and Terms ofEmployment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)