

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE

- First named claimant

CASE NO.

UD1276/2010
RP1725/2010
WT521/2010
MN1225/2010

EMPLOYEE

- Second named claimant

UD1277/2010
RP1726/2010
WT522/2010
MN1226/2010

EMPLOYEE

- Third named claimant

UD1278/2010
RP1727/2010
MN1227/2010
WT523/2010

against

EMPLOYER - *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr G. Mc Auliffe
Mr J. Flannery

heard this claim at Dublin on 9th November 2011

Representation:

Claimants: In person

Respondent: No appearance by or on behalf of the respondent

The determination of the Tribunal was as follows:

Prior to the hearing the liquidator wrote to the Employment Appeals Secretariat informing them that all three claimants had received payment under the Redundancy Payments Acts 1967 to 2007, Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Organisation of Working Time Act 1997.

Claimants Case

The second named claimant gave direct sworn evidence on behalf of all the named claimants. He commenced employment with the respondent in 1999, the first named claimant commenced in 2002 while the third named claimant commenced in 2001. All three claimants were employed as chefs and the second named claimant was also the catering manager. The respondents operated a retail outlet in Dublin with a production kitchen attached. Produce made on the premises was supplied to shops, restaurants and farmers markets. The respondent also provided catering outside of these premises. In 2009 two of the directors (SW and PD) moved to Offaly and they set up a separate kitchen to the one in Dublin and then opened a shop in Abbeyleix in September 2009. This new operation took some of the workload from the Dublin base.

On the 8th December 2009 SW a director arrived in Dublin and announced to the employees that the company was having financial difficulties. She informed them that as from the 1st of January 2010 that all staff would be cut to two days a week. They never received this change of contracted hours in writing. The claimants sought advice and sent a registered letter to SW on the 22nd December 2009. A copy of this letter was produced in evidence. In this letter they state that they accept that the company was having financial difficulties and were willing to the reduced hours on a temporary basis and asked that this position be reviewed on 31st January 2010. This letter was never acknowledged by the respondent. Previous to this letter the respondent used to make 4 to 5 daily phone calls to the premises in Dublin, these calls stopped after they sent this letter.

On the 2nd February 2010 they sent another letter requesting to meet with the director (SW) to discuss their terms of employment no later than the 21st February 2010. Again they received no response to this letter or had any communication from the director. At this time in work there was a bad atmosphere and moral was very low. He explained they would have been willing to do short-time as long as it took to turn around the company, but they wanted to be kept informed.

On the 27th February 2010 they were requested to attend a meeting on the respondent's premises at 2.00pm. At this meeting PD the director informed them that the cheque book had been taken from SD the day before as the company was insolvent, the shutters were coming down on the business and would stay down. They received nothing in writing from the respondent. Later that day they learnt that two members of staff who were not at this meeting were taking over the business.

The next day two of the claimants went to the farmers market in Dunloaghair where they found the respondent trading as they normally did every Sunday. On the 3rd March they visited the premises in Offaly where they found the respondent operating business as usual. A separate registered company was set up on the 15th March 2010 and the Offaly premises continue to operate. The claimants felt that this company was set up so that the respondent could avoid paying any monies owed to them and other employees e.g. wages, holidays, redundancies.

KD one of the employees who did not attend the meeting on the 27th February 2010 took over the respondents business, and opened under a different name on the 1st March 2010. The same staff are still working there apart from the three claimants who were the only qualified chefs employed at the time of the takeover.

The claimants eventually received their statutory Redundancy in February 2011. The First named claimant received €4,652.36 in respect of arrears of wages, holiday pay and minimum notice from the liquidator of the named respondent in May 2011. The second and third named claimant also received payments of €5,852.11 and €859.06 respectively in outstanding arrears from the liquidator in May 2011.

Determination

The claims under the Redundancy Payments Acts 1967 to 2007, Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Organisation of Working Time Act 1997 were dealt with by the liquidator and therefore were withdrawn. It would appear that the Transfer of Undertaking Act may have applied in this case against the company who took over the running of the respondent's business, however this claim is now statute barred.

Based on the uncontested evidence the Tribunal acknowledge that the three claimants were treated abysmally by the respondent. From the evidence adduced the Tribunal considers that a transfer of undertaking occurred on the 28th February 2010 consequently the claims under the Unfair Dismissals Acts 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)