

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE

CASE NO.  
UD1274/2010

against

EMPLOYER

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. E. Harrington

Members: Ms. M. Sweeney  
Mr. O. Wills

heard this claim in Cork on 12 October 2011 and 23 January 2012

Representation:

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Claimant(s):

Mr. Andrew O'Connell, Pdraig J. O'Connell, Solicitors, Glebe Lane, Killarney,  
Co. Kerry

Respondent(s):

Mr. David Waters, Sullivan Waters & Co,  
19 West End, Mallow, Co. Cork

The determination of the Tribunal was as follows:-

Giving sworn testimony, the claimant said that she had started hotel employment as a manager with the respondent in June 2006. Her hours varied but she worked about seventy hours per week. Her duties varied. She was in charge of food/ beverages, HR and marketing. The bar was extended. Expenditure was put into the restaurant. The banqueting manager left. She was put into his role. There was no extra pay but she had no problem with that. She was assistant

general manager and liaised with the general manager (hereafter referred to as PW).

The claimant took maternity leave after her holidays in July 2009. She had no issue with being of assistance to the respondent during her maternity leave and was contacted by PW and others from the hotel.

The claimant wanted to go back in January 2010. She contacted PW on 6 January 2010. On 7 January 2010 PW asked her to meet him. She knew that it would be quiet in January, February and March. Work would build up slowly. When the claimant met PW on 12 January 2010 it was just the two of them. She wanted to work four long days. The meeting was very short. PW said revenue would be down and that wages were high. He said that he could not afford her and NX (the man who had covered her maternity leave). PW offered her a redundancy payment of some €7.7k or a bit of part-time work here and there. It would depend on business and on work covering sick leave. No set hours were specified for the part-time work. The claimant did not query how the redundancy figure was arrived at. She had been expecting just to go back to work. She twice asked who was to take her role. PW said that he would keep NX on definitely.

The claimant was shocked and very hurt. She had put her heart and soul into the hotel which she had wanted to bring up to four-star standard. She had told NX that he could contact her if he wanted help.

The claimant's solicitors wrote to PW by letter dated 21 January 2010. On 26 January 2010 PW wrote back saying that he believed there had been a misunderstanding. On 2 February the claimant's solicitors replied that there was no question of any misunderstanding.

By letter dated 10 February 2010 the respondent's solicitor (DW) wrote to the claimant's solicitors. It was put to the claimant that her job was still there if she wanted it. The claimant replied that she had been quite affected by what had happened. On 23 April 2010 she deemed herself constructively dismissed. She told the Tribunal that she did not decide this lightly. She believed that the only reason that she was offered the job was because NX had left shortly after her 12 January meeting.

Giving sworn testimony, PW said that the respondent generally spoke to employees returning from maternity leave to see if they wanted part-time hours, that the hotel was flexible and that

generally it would be a chat to find a compromise. He said that the meeting with the claimant must have gone wrong but that the claimant had been offered the job back.

**Determination:**

The respondent's general manager made a mistake from which the claimant did not assist him to recover. He breached her rights but she could have gone back to work. He handled the situation badly but the Tribunal was not satisfied that the claimant did everything she could to eke out new employment.

The Tribunal was not satisfied that the claimant made full use of the respondent's grievance procedure. She was told in writing that her job was there but she no longer trusted her employer. Her general manager gave her a case and was bamboozled by her but she was guilty of significant contributory negligence although the word redundancy was a big shock to her on her return from maternity leave.

The Tribunal, unanimously allowing the claim under the Unfair Dismissals Acts, 1977 to 2007, deems it just and equitable in all the circumstances of the case to award the claimant compensation in the amount of €31,000.00 (thirty-one thousand euro) under the said legislation.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

