

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIMS OF:

CASE NOS.

EMPLOYEE – *claimant*

UD1399/2010

MN1345/2010

Against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr R. Prole  
Mr O. Nulty

heard this claim at Drogheda on 5<sup>th</sup> January 2012

Representation:

Claimant: Mr. Pdraig Duffy of Tully & Duffy Solicitors,  
49 Laurence Street, Drogheda, Co. Louth

Respondent: Mr. Darragh McNamara BL, instructed by Patricia Holohan & Co. Solicitors.  
Ground Floor, 24 Laurence Street, Drogheda, Co. Louth

The determination of the Tribunal is as follows:

The claimant accepted that he had been paid notice and the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 was withdrawn.

**Respondent's Case**

The former club captain gave evidence. His role was to meet and greet members and visitors to the club. He was also involved in the general running of the club. In early 2009 the franchise to run the bar and restaurant was advertised and a franchisee was contracted. The franchisee employed the

claimant.

In September 2009 the franchisee pulled out because he felt the operation would not be profitable for him over the winter. Also the quality of the food deteriorated at this time. However the club needed to keep the bar and restaurant open. The former club captain approached the claimant. The claimant was not interested in taking up the franchise but would accept a position as an employee. The claimant took up employment on a temporary contract with the club. The former club captain did not tell the claimant his job was secure before the franchisee left.

Post-Christmas the club readdressed the catering issue. The franchise was advertised and the successful candidate was appointed. The claimant was kept informed of developments. When the claimant was let go he was paid notice.

The former treasurer gave evidence. A franchisee was appointed to run the restaurant and the bar. The club fitted out the kitchen and the restaurant. The franchisee was responsible for costs and also staffed the restaurant.

Problems arose with the franchisee, revenue fell and the quality of the food deteriorated. The franchisee left suddenly. The franchisee ended the franchise at the end of September 2009. The claimant had worked for the franchisee. The club retained control of the bar. It would be difficult to get a franchisee so late in the year. The restaurant is open all year but is significantly less busy during the winter. Therefore the claimant was approached to keep the restaurant running. He was an employee of the club and not a franchisee. The claimant was asked for a p.45 from the franchisee to enable the club to pay him. It was always intended to look for another franchisee.

When the claimant became an employee of the club most of his colleagues transferred to the club too.

In March the franchise was advertised. On 16 March 2009 the general manager, who is no longer employed by the club; and a consultant interviewed the applicants. The claimant did not apply for the franchise but he was interviewed to run the restaurant.

A new franchisee was appointed. The former treasurer thought that the claimant decided to leave voluntarily because he did not get the top job. The former treasurer accepted that a notice was stuck on the restaurant door saying that the claimant would leave on Sunday 9<sup>th</sup> May 2010 and the new franchisee would start on 10<sup>th</sup> May.

One day after the claimant ceased working for the club the former treasurer was having a meal in a restaurant when he caught a glimpse of the claimant in the kitchen.

### **Claimant's Case**

The claimant gave evidence. He has a professional catering qualification. He had worked in restaurants. He had his own café for a while but later sold it. The franchisee advertised for a head chef. The claimant started working for the franchisee in March 09 as a chef. The previous chef was let go. The claimant brought 2 people to the job.

As time went on the franchisee took a back role. The claimant was running the food end of the operation. During the summer business was very busy. The business was making money.

Then one day the green keeper told him that the franchise was in trouble. The claimant asked the franchisee, who told him he could not talk about it for legal reasons. In September 2009 the claimant was concerned about his position. He secured a position in another restaurant. When he spoke to the former captain he was asked to stay on. The general manager came to the restaurant to see the claimant. The general manager told the claimant that they would get rid of the franchisee and that because the claimant was better he would have a job for a long time. The claimant believing his job was secure declined the alternative position as a chef.

The club administrator approached the claimant in mid-December and gave him a draft contract of employment. The claimant was asked to read the contract and to bring it back to the administrator in January. The contract was never signed. In January the club administrator told the claimant that it was proposed to appoint a catering manager. When the claimant asked what that would mean. The club administrator told the claimant the job would be his. The position was advertised.

The claimant was called to an interview at short notice by the club captains and the club administrator. They asked him about the kitchen and he told them how the business could be built up. He was never told that if he was unsuccessful his position would be in jeopardy. They told him that they would be in touch.

On Tuesday 4 May 2010 the club administrator asked the claimant to come to the office before going home. The club administrator told the claimant that it was a bit of bad news. The job was being given to someone else. He would be paid 2 weeks' notice and any holidays due. He was to finish on Sunday and his replacement would start on Monday. The claimant's last day was the day of the President's Prize dinner. The event was a great success and the food was great.

The claimant had received no verbal warnings relating to his work. In fact his food was often complimented. The claimant felt that he had been unfairly let go.

The claimant worked a trial shift in a restaurant after his employment at the club terminated. The trial did not lead to a job offer.

The claimant established his loss for the Tribunal.

## **Determination**

The Tribunal carefully considered the evidence adduced and the legal submissions on behalf of the claimant and the respondent. The Tribunal finds that there was a transfer of undertaking in this case and therefore the claimant has the necessary service to take a claim for unfair dismissal.

There was a conflict of evidence concerning the intended length of the claimant's employment. The former treasurer believed that the claimant was employed as a stop gap between two franchise agreements. The claimant understood that he had a permanent position. In the absence of any documentary record or signed contract of employment the Tribunal favours the claimant's version.

When it came to dismissing the claimant the respondent club did not follow any proper procedure.

The claimant was not given notice that his position was in jeopardy. Neither was there a formal discussion with the claimant where he could have been afforded a right of reply. Finally the claimant was offered no opportunity to appeal the decision to dismiss him.

The claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the claimant is awarded the sum of €25,000.00

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

