

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE – *Claimant 1*

UD2052/2010
RP2797/2010
MN2000/2010

EMPLOYEE – *Claimant 2*

UD2053/2010
RP2798/2010
MN2001/2010

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr D. Moore
Mr A. Butler

heard this claim at Dublin on 6th March 2012

Representation:

Claimant(s) :Mr. Paul Henry, SIPTU, MISC Unit, Liberty Hall, Dublin 1

Respondent(s) : Brian Trayers, Trayers & Company Solicitors, 5 Ellis Quay, Dublin 7

The determination of the Tribunal was as follows:-

Preliminary Issue:

The claimant's representative withdrew claims under the Unfair Dismissals Acts, 1977 to 2007 in respect of both claimants.

The respondent gave evidence of acquiring a restaurant lease in July 2008. He employed the

claimants who were employees of the previous lease holder. Shortly after taking over, a downturn in the economy had a serious affect on the business and the respondent said he could not afford to refurbish the premises as planned. Cut backs which he implemented did not work and he decided to cease trading in and around September 2009. He wrote to employees on the 15th September 2009 advising them that the business would close four weeks from that date.

During cross examination the respondent told the Tribunal he didn't pay the employees notice but paid them wages up to date. He was unaware of the continuity of service and did not know dates the employees had commenced employment with the previous leaseholder. He agreed he took on staff from the previous restaurant leaseholder and provided each employee with new terms and conditions at the time he took over. He also confirmed to the Tribunal that he did not provide a list of employees to the new leaseholder who took over in October 2009.

Claimant one gave evidence of commencing employment at the restaurant in 1995. During his employment at the restaurant the owners changed several times. He told the Tribunal that the respondent took over in July 2008 and that he never received a P45 only a letter notifying him that the business was closing in September 2009. He confirmed to the Tribunal he received no redundancy payment and was never offered employment by the new owner.

Claimant two gave evidence of commencing employment in April 2002. While on holidays the letter from the respondent advising that the business was closing issued to him. He confirmed to the Tribunal he received no redundancy payment.

Determination

The Tribunal has carefully considered all of the evidence adduced. A letter dated the 15th September 2009 was introduced into evidence headed "closing down of business". Both claimants received this letter. There was nothing in this letter to suggest that the business would continue trading. None of the staff were informed that there was a possibility that the business would continue and therefore it was reasonable for the claimants to assume based on the content of the letter that their positions were made redundant.

The Tribunal awards lump sum payments under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Claimant 1

Date of Birth	16 August 1962
Date of Commencement	16 April 1995
Date of Termination	18 October 2009
Weekly Gross Pay	€615

Claimant 2

Date of Birth	18 April 1968
Date of Commencement	1 April 2002
Date of Termination	18 October 2009
Weekly Gross Pay	€450

This award is made subject to the claimants having been in insurable employment under the Social Welfare Acts during the relevant period. Please note that a weekly ceiling of €600 applies to all awards made from the Social Insurance fund.

The letter dated the 15th September 2009 notified the claimants the business was closing down therefore the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail as the claimants worked the notice period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)