

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE- *claimant*

CASE NO.  
MN2179/2010  
UD2209/2010  
WT988/2010

against  
EMPLOYER - *respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms C. Egan B.L.  
Members: Mr. W. O'Carroll  
Ms H. Henry

heard this claim at Galway on 31st May 2012

Representation:

\_\_\_\_\_

Claimant(s) : Purdy Fitzgerald, Solicitors, Kiltartan House, Forster  
Street, Galway

Respondent(s) : In Person (Not legally represented)

The claims under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Organisation of Working Time Act 1997 were withdrawn by the claimant's representative during the course of the hearing.

### Respondent's Case

The respondent trades as a hotel in the west of Ireland. The owner of the business, (RL) gave evidence that he operated the hotel for a period of time prior to leasing out the business. The claimant worked as a chef for (RL) and continued to work for the new tenant. Following the new tenant going into liquidation (RL) returned to the business in January 2009 retaining all the existing employees including the claimant. He gave evidence that by mid 2010 there were a lot of problems in the kitchen area relating to the general management of the kitchen and overstaffing. By this time the claimant was employed as head chef. The Tribunal heard specific evidence in relation to raw prawns served to customers and of a Christmas party which turned into a nightmare. The claimant, as head chef was responsible for the operation of the kitchen but had lost control of the kitchen area. (RL) gave further evidence that he had several meetings

with the claimant concerning the management of the kitchen. These meetings were not documented or minuted, but it was becoming evident that the claimant was not capable of doing his job.

The claimant was then called to a meeting on 1 July 2010 and (RL) gave evidence that the claimant stated that he was “not the man for the job” and was “in over his head”. This meeting was not a disciplinary meeting but the decision to dismiss the claimant was taken promptly when he admitted that he was “in over his head”. (RL) accepted that he did not put forward any proposals to the claimant as to how the situation could be improved and could not recall if the claimant was given the right to appeal the decision to dismiss him.

The general manager of the hotel, (JB) gave evidence that a chef known as (SF), who was hired in March 2010, began to bring issues to his attention concerning the management of the kitchen. He met with the claimant on several occasions concerning ongoing issues in the kitchen. He gave evidence that he was told by two other chefs that the claimant told them to serve prawns which turned out to be raw prawns. There were also re-occurring issues in the kitchen area with the Health Officer. The witness gave evidence that he put a training plan in place for kitchen staff but this plan was not implemented by the claimant.

He gave further evidence that the claimant was absent from work from May 2010 for 7 weeks on paid leave in lieu of hours worked. He was contacted to attend a meeting on 1 July 2010. There was no agenda for that meeting. The witness, (RL) and the claimant attended the meeting and issues within the kitchen area were discussed. The witness gave evidence that he and (RL) outlined their concerns and the claimant said that he was “not the right man for the job”. (RL) then said it is time to part company and the claimant was dismissed. The claimant was not given the right to appeal the decision. He gave evidence that there was no need to carry out any further investigation when the claimant said that he was the wrong person for the job. He accepted that the claimant was not informed that it was a serious matter prior to the meeting and was not told that he had the right of representation at that meeting.

### **Claimant’s Case**

The claimant gave evidence that he qualified as a chef in 1998. He was employed by (RL) in August 2001 and worked for him for 3 years during which time he was promoted to head chef. He continued to work in the business following (RL’s) departure and remained in employment following (RL’s) return to the business in January 2009. He never experienced any disciplinary issues during his tenure of employment. He attended weekly meetings concerning general improvements in the business and generating more business. He was never under any impression that the owner had any concerns about him doing his job.

He gave further evidence that when (SF) was hired she looked after costings, staffing and suppliers. She made some changes to the business bringing in an additional chef to the kitchen. In May 2010 he had pre-booked 2 weeks holidays and was told by (JB) that he could take a further two weeks. He was subsequently told that he could take off a further three weeks. In total he was off work for 7 weeks. He gave evidence that he then received a text message from (JB) asking him to attend a meeting on 1 July 2010. He told the Tribunal that within 3 minutes of the commencement of that meeting he was told that he was being let go. He believed that he was let go because (SF) was hired in March. He accepted that he said that he was the wrong man for the job after he was told that he was being let go. He was not informed that he could appeal his dismissal. He accepted that he was responsible for one portion of raw prawns being

served and apologized for that at the meeting. He was not responsible for the remainder of the raw prawns being served as he was on holidays at that time. He gave evidence that he was never interviewed or investigated concerning the fact that raw prawns had been served. He believed that he was a capable head chef and secured alternative employment immediately after his dismissal. Evidence of loss of earnings was submitted to the Tribunal.

### **Determination**

The Tribunal carefully considered the evidence adduced. The Tribunal is satisfied that fair procedures were not afforded to the claimant. In that regard the Tribunal notes that no right of appeal was afforded to the claimant. The Tribunal finds in all the circumstances that the claimant was unfairly dismissed. The Tribunal deems compensation to be the appropriate remedy and awards the claimant compensation in the sum of €11,715.00 under the Unfair Dismissals Acts 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

