

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE
–**Claimant**

UD1085/2010
MN1052/2010

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: Ms K.T. O'Mahony BL

Members: Mr J. Hennessey
Ms H. Kelleher

heard these claims at Cork on 30 March 2012

Representation:

Claimant:

Mr Harold Brooks BL instructed by Mr Michael Prendiville,
Brooks & Company Solicitors, Baldwin Street,
Mitchelstown, Co. Cork

Respondent:

XXX & YYY

The determination of the Tribunal was as follows:

At the outset the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

The claimant was employed as the general manager of a branch of a catering company (the company) which provided the catering service at the County Councils offices in County Hall. When the contract under which the company had provided this service came up for renewal the company decided not place a new tender for the contract when it was advertised on 2 October 2009. The respondent's tender for the catering contract was successful and all of the staff employed by the company in County Hall transferred to the respondent. The transfer of the undertaking was

scheduled to take place on 4 January 2010 but due to the company ceasing trading at County Hall on 20 December 2009 the respondent commenced operations in County Hall on 29 December 2009.

The company had provided a catering service in both the ground floor staff restaurant and the conference and banqueting facilities on the 16th and 17th floors. The operation of the banqueting facilities was not part of the contract for which the respondent tendered but there was an understanding that subject to agreement with the County Council such service would be provided as and when approved by the County Council.

Coincidentally, the ground floor restaurant was damaged by flooding during November 2009 and both the company and then the respondent operated out of the 16th and 17th floors until the ground floor restaurant was refurbished in or around March 2010.

On 14 January 2010 one of the directors of the respondent informed the claimant that her position had been declared redundant as the position of general manager of the respondent's contracts was held by another director and that, unlike with the company, the respondent's policy is that on-site responsibility is taken by the head chef who liaises with the directors. The respondent's position is that the claimant spent some 80% of her time on the operations on the banqueting facilities, which were not included in their contractual arrangement with the council.

Determination:

The claimant accepted that some 70 to 80% of her time when working for the company was in connection with banqueting facilities. The respondent operates under a different structure from that used by the company and the Tribunal is satisfied that the level of management at which the claimant operated in the company was carried out by the directors of the respondent following the transfer at the end of 2009. Following a transfer such as this the respondent is entitled to declare positions redundant for economic, technical or operational reasons. The Tribunal is satisfied that the operational reasons given by the respondent for the claimant's selection for redundancy are genuine and that the selection of the claimant as a candidate for redundancy was not unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)