

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

EMPLOYEE

- *Claimant*

**CASE NO.**

UD225/2011

WT59/2011

MN226/2011

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 P. Mcgrath B.L.

Members: Mr. D. Winston  
Mr J. Flannery

heard this claim at Dublin on 22nd June 2012

**Representation:**

Claimant: Mr Shane Healy, Healy O'Connor, Solicitors, 77 Sir John Rogerson's Quay, Dublin 2

Respondent: In Person

The determination of the Tribunal was as follows:-

**Determination**

The Tribunal has carefully considered the evidence adduced. In cases of constructive dismissal the onus rests with the claimant to establish that he could no longer reasonably be expected to continue in the workplace.

The Tribunal finds that the claimant has not been able to demonstrate that the workplace had become an impossible environment for him to work in. It is common case that there was a downturn in trade which resulted in an inevitable drop off in the number of hours the claimant was expected to work. For their own reasons the restaurant managers were not minded to allow the claimant work as a waiter on the floor. To their mind the claimant was suitable to bar and runner work. The claimant was anxious to be a waiter – a much more lucrative job than that of bar work /

runner work.

It is quite clear that this was a source of some tension between the parties. The claimant handed in his notice by reason of the reduction in hours and wages, the refusal to promote him to the floor and, crucially, because he had another job lined up to go to.

This was not a case of constructive dismissal as the claimant was not being forced out by reason of a breakdown in employer/employee relationship.

The claim under the Unfair Dismissals Acts 1977 to 2007 fails. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

There was no evidence adduced in respect of the claim under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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