

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:  
EMPLOYEE

*-claimant*

CASE NO.  
UD1513/2010  
RP2037/2010  
MN1450/2010  
WT627/2010

against

EMPLOYER 1  
EMPLOYER 2

*-respondent*

*-respondent*

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007**  
**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr D. Hegarty  
Ms H. Kelleher

heard this claim at Cork on 19th January and 16th April 2012

**Representation:**

Claimant: Brooks & Company, Solicitors, Baldwin Street, Mitchelstown, Co Cork

Respondent : Mr. Michael Shinnick, Shinnick Fitzgibbon & Co, Solicitors,  
Baldwin Street, Mitchelstown, Co Cork

The claims under the Redundancy Payments Acts, 1967 to 2007 and the Organisation of Working Time Act 1997 were withdrawn at the outset.

## **Respondent's Case**

The current owner of the respondent restaurant (WJ) gave evidence. WJ took over the restaurant from the previous owner in June 2009 which included 4 members of staff. On the 29<sup>th</sup> of June the claimant was doing dishes and moving between the kitchen and dining room. She was supposed to be serving customers 'every now and then' simultaneously. The claimant was very slow so WJ asked her to speed up. WJ discussed the situation with his wife and wondered whether the claimant in fact wanted her job. As a result of the discussion when the claimant asked for her break at around 11.30am WJ instructed the claimant to go home; she laughed and said 'I'm full-time' and started shouting saying we couldn't send her home. WJ said 'you can go home because you've been doing nothing all morning.' WJ explained that the claimant would have to work faster but she continued to argue and refused to leave. WJ asked her to go home and think about whether she wants a job. The following day the claimant's mother rang and said the claimant was sick and the following day a sick cert was handed in for her.

The respondent replied on the 15<sup>th</sup> of August 2010 to a solicitor's letter from the claimant. The respondent's letter stated that, *'(the claimant) is still an employee, was never dismissed and has not been replaced. Her name still appears on the roster but unfortunately (claimant) has not attended the workplace or responded to attempts contact. (The claimant) is still welcome to resume her position at (the respondent) at anytime. To your letter requesting a P45 this is not possible as she has not been dismissed and we have not received a letter of resignation.'*

The claimant's hours had been changed, but all the staff had their hours changed with two weeks verbal notice. On the first day the change of hours were discussed the claimant said she would not work the new hours and would be leaving at the normal time; she returned later and apologised. Not everybody accepted the new working hours, this was not a problem. The only real problems with the claimant were food safety issues. She received a warning for breaching the food safety regulations. There was never any shouting or abuse in the respondent. The respondent might throw a pot in the sink but not directed at the claimant, just into the sink to be washed.

## **Claimant's Case**

The claimant commenced employment at this food outlet premises in the autumn of 2005. Up to the summer of 2009 her working hours and role remained fairly constant. At that time a new employer took over the business and the claimant's employment continued under a transfer of undertaking arrangement. Both prior to and subsequent to that changeover the claimant was not issued with a contract of employment nor terms and conditions of employment. Her new employer consisted of a couple with whom at least initially she got on well with. However, that relationship particularly with the male employer soon began to deteriorate.

That deterioration took the form of unilaterally changing her hours and indeed role on the premises. That resulted in among other things with the claimant working beyond those hours in order to finish her tasks. That extra time went unpaid. When the claimant complained of this situation she was at best ignored but at other times confronted in a hostile and aggressive manner by the male partner. In comparison with other colleagues she was reprimanded for reporting to work two minutes late while other staff who were later were not subjected to any sanction. In general the claimant felt picked on and discriminated against by that person.

At the end of March 2010 the claimant was the recipient of a written warning from the respondent. That warning which she accepted was related to the non-wearing of gloves in the preparation of

food. She commented that others had behaved the same way yet they did not suffer the same consequence. Her enquires about her employment rights to a third party did not endear her to that male proprietor who made it known he would take no heed of her complaints. From December 2009 up to June 2010 his behaviour and attitude towards her continued to be offensive and distributing to the extent she dreaded coming into work. Added to that situation was a lack of training on a till which she was asked to work on.

The incident which triggered the claimant's departure from the respondent occurred on 29 June 2010. She had been working non-stop for over two hours that morning and her request to this male respondent to take a break brought on a tirade of abuse. He shouted and roared at her with the message that she had been doing nothing all morning. Both his tone and language were abusive as he explicitly told her to get out of the premises. The claimant was upset and shocked at that treatment and upon acting on his instructions vacated the shop. In doing so she described him in a derogatory way to his partner. She then went to her doctor and a solicitor.

A former colleague who was familiar with the respondents described the male partner as short tempered and impulsive. She was unimpressed with his antics and gave an example of his involvement with a car driven by her. She too dreaded going to work there knowing he was present. This witness was not a party to that incident on 29 June 2010.

### **Determination**

Apart from it being a legal requirement the issuing of terms and conditions of employment to employees is of mutual benefit to all concerned. It gives a reference point in the employer/employee relationship. An absence of that document together with no contract of employment is a recipe for misunderstandings and indeed disputes. In addition no staff handbook containing a disciplinary and grievance procedure was in evidence in this case. Again this is a major flaw in the conduct of the respondent when dealing with staff.

When an employer instructs an employee to leave the workplace for no good reason it is not unreasonable for the employee to consider him/herself dismissed. When that instruction is done in an abusive aggressive manner then it is very reasonable for the listener to conclude she/he has lost their job. In these circumstances the Tribunal finds that the claimant was dismissed and that this dismissal was unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds and the claimant is awarded €12,290.98 as compensation under those Acts.

The appeal under the Minimum Notice and Terms of Employment Acts is allowed and the appellants are awarded €709.02 as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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