

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM OF:**  
EMPLOYEE

**CASE NO.**  
UD1726/2010  
MN1677/2010

- *Claimant*

Against

EMPLOYER

- *Respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Mr T. O'Grady  
Mr M. O'Reilly

heard this claim at Dublin on 20th March 2012 and 21st March 2012

**Representation:**

Claimant: Mr. Paul Henry, Siptu, Membership Information &, Support Centre, Liberty Hall,  
Dublin 1

Respondent: Ms. Catherine Day, Peninsula Business Services (Ireland) Limited, Unit 3,  
Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:-

**Claimant's Case**

The claimant told the Tribunal that she commenced working for the respondent company in April 2009 as a waitress. At this stage the claimant's manager, TB was responsible for drawing up the roster but this was usually changed by GM, another manager. The claimant did not feel that the shifts were divided fairly in so far as some employees would not be required to work

split shifts or weekends. The claimant also had difficulty with the tips and generally felt that she was being treated differently than other employees by GM.

The claimant told the Tribunal that GM's behaviour towards her was not professional and on occasion he asked her about what kind of underwear she was wearing and told her that he was a big fan of her breasts. In the beginning the claimant tried to ignore his comments but after a few months of this treatment she decided to write a letter of complaint to the respondent, MK.

She wrote to MK in February to inform him about her complaints. This resulted in approximately five meetings taking place the first of which was on 16<sup>th</sup> February. At this meeting she told him about GM's inappropriateness towards her and provided him with examples that he could look into.

The claimant's sister was also experiencing difficulties with GM which resulted in an internal investigation. On the 27<sup>th</sup> March the claimant's sister attended a grievance meeting and was informed that she would no longer be required to work with GM. The claimant found this strange because MK had not reverted back to her in respect of her complaints since the meetings she had with him on 16<sup>th</sup> February 2010. She approached MK at the beginning of April to find out what was happening in respect of her own situation.

On 28<sup>th</sup> April 2010 the claimant received correspondence from MK titled "Result of Grievance Hearing". This correspondence told the claimant that her grievance was investigated and the appropriate actions had been taken and that these actions were discussed with her personally. The claimant did not receive a draft report on the investigation that took place. The claimant told the Tribunal that MK must have been referring to when she approached him at the beginning of April at which time he asked her had anything changed in respect of her complaints. She informed MK at this stage that small things, such as the roster issue, had been resolved but not all of her issues. The claimant was not given the same assurances as her sister.

There was a general meeting held among staff in April and respect and dignity were discussed. On 12<sup>th</sup> May the claimant approached MK, the respondent while he was having lunch. She told him that she had a number of work related issues and was feeling stressed, losing weight and could not eat.

The claimant was not given the same assurances as her sister in respect of her complaints to MK. On 21<sup>st</sup> May the claimant phoned GM and informed him that she had the flu and would be absent from work the following day. GM told her to take a few days off and he would cover her shift. On 26<sup>th</sup> May she attended a meeting with the respondent, his wife AK, and her manager GM. The respondent wanted to discuss her absence from work. She told them that she had been sick and could not attend work. AK told the claimant that if she was not happy in the workplace she should just leave. MK told her that he did not want to listen to her problems, she was always complaining and that he felt she had taken time off to be with her sister and was not suffering from illness. The claimant felt that she was not given a chance to explain herself at this meeting and when the meeting was over she was upset.

After the meeting on 26<sup>th</sup> May 2010 the claimant was absent on sick leave and did not return to work until 2<sup>nd</sup> June 2010. On her return to work on 2<sup>nd</sup> June 2010 the claimant was asked to attend a meeting with MK and AK. She told them that she did not want to attend a meeting without her union representative. The respondent asked her why she was stressed and that she

should let things blow over.

The claimant attended her doctor on 2<sup>nd</sup> June 2010 and was advised not to return to work. The claimant resigned from the respondent company on 15<sup>th</sup> June 2010.

During cross examination the claimant agreed that her written complaint to MK did not mention inappropriate touching from her manager. It did raise her issues in respect of the roster, other employees unprofessional behaviour, and tips. The claimant wrote this complaint at the back of the shop. She was in a rush to have it ready to submit to MK and felt that she could speak to him directly about the inappropriate touching.

The claimant agreed that she signed off on the minutes of the meeting held between herself and the respondent on 9<sup>th</sup> February 2010 and these minutes did not have any reference to inappropriate touching of the claimant by her manager. The claimant insisted that she made MK aware of the inappropriate touching but could not remember the exact dates. When MK asked the claimant on the 15<sup>th</sup> April if she had any further complaints in relation to GM she told him that she did not feel comfortable working with him. The claimant denied telling MK that she was happy to continue working with GM.

The claimant confirmed that she was absent on sick leave on 22<sup>nd</sup> May 2010 but had previously requested the day off as annual leave. The claimant confirmed that she received correspondence from MK in June 2010 asking her to outline any issues or areas of concern that she had. The claimant did not respond to this correspondence.

The claimant agreed that she did not put any further complaints in writing prior to her resignation. She felt that it would be a pointless exercise because the respondent's letter of 28<sup>th</sup> April 2010 had informed her that she could appeal the decision to the respondent.

### **Respondent's Case**

The Tribunal heard evidence from MK, the director of the respondent company. The manager, GM, started working for the company in 2009 when they opened their restaurant in Dundrum.

MK told the Tribunal that the claimant never made complaints to him in respect of inappropriate touching by her manager, GM. When he received the claimant's complaints MK and his wife started an investigation as soon as possible. He asked the claimant why she did not approach him sooner and she told him that she did not know.

MK investigated the complaints made but did not issue an outcome immediately because one of the employees who complained, the claimant's sister, was absent on sick leave. On 15<sup>th</sup> April 2010 MK had an informal meeting with the claimant and asked her how things were going in work. The claimant did not raise any issues with him at this stage. On 28<sup>th</sup> April 2010 the claimant was issued with the results of the grievance hearing and she did not appeal this decision.

MK told the Tribunal that he tried to carry out a return to work meeting with the claimant on 2<sup>nd</sup> June 2010 but the claimant refused to discuss any issues without her trade union representative being in attendance.

During cross examination MK confirmed that the claimant's manager was not suspended during

the investigatory process. MK agreed that he did not respond to correspondence from the claimant's trade union representative, in which he asked to be allowed to take part in process because at the time of this correspondence the outcome of the investigatory process had been reached. MK confirmed that there was a delay in issuing the written outcome of the investigatory process and it was sent to the claimant in April. MK accepted that the claimant was not provided with a draft report on the investigatory process.

MK confirmed that the claimant and her manager, GM were not separated during work hours because the claimant's complaint was not of the same sexual nature as her sister's complaint. MK insisted that although the claimant was told that she could appeal the decision directly to him, if the claimant had exercised her right to appeal the decision to him he would have invoked the services of an external HR company to deal with the appeal.

The Tribunal heard evidence from AK, director of the respondent company. She became aware of the claimant's complaints in February 2010. She was shocked because there had been no complaints prior to this.

On 21<sup>st</sup> May 2010 AK was in the restaurant in Dundrum with the claimant and they were talking about the claimant's cold. AK asked the claimant to contact her later and let her know if she would be attending work the following day.

AK was at the meeting held with the claimant on 26<sup>th</sup> May 2010 and was not aggressive towards the claimant nor did she accuse the claimant. On 2<sup>nd</sup> June 2010 the claimant was due to return to work after a period of sick leave. A front of house meeting was scheduled but AK and MK decided to cancel this meeting to focus on carrying out the claimant's return to work meeting. AK was anxious to complete a return to work meeting on this occasion because the claimant's medical cert had stated her reason for absence as work related stress.

During cross examination AK confirmed that the claimant was not aware that the original meeting had been cancelled until she attended for work on 2<sup>nd</sup> June 2010.

### **Determination**

The Tribunal has carefully considered all of the issues raised during this hearing. The claimant made complaints about her terms and conditions of work in February 2010. The company addressed the issues quickly and formed a decision by mid March. This was delayed due to absence of an employee through illness. The decision was communicated to the claimant in April.

However, in contravention to company policy, no detail of the substance of the investigation, the content, or reasons for the outcome were communicated to the claimant. The claimant was given the opportunity to appeal the decision to the decision maker. However, the Tribunal concludes that there was no substance to appeal and furthermore that the appeal was to MK who made the decision and so could not be considered a valid appeal option. While MK gave evidence that he would have sent the appeal to an external third party this was not communicated to the claimant and the claimant had no way of knowing this.

In evidence before the Tribunal the claimant expanded her complaints but the respondent gave evidence that these extra allegations were never brought to their attention and the Tribunal prefers the evidence of the respondent on this issue.

However, the Tribunal considers the process engaged in investigating the complaints was both flawed and ineffective. Accordingly, the Tribunal awards the claimant the sum of €5,900.00 under the Unfair Dismissals Acts, 1977 to 2007.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 was not addressed by either party and the Tribunal dismiss the claim under this Act.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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