

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**  
EMPLOYEE

*- Claimant*

**CASE NO.**  
MN1397/2011  
WT529/2011

against  
EMPLOYER

*- Respondent*

under

### 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: Ms B. Glynn

Members: Mr. A. O'Mara  
Mr J. Flannery

heard this claim at Mullingar on 10th October 2012

#### **Representation:**

Claimants(s) :

Respondent(s) :

The decision of the Tribunal was as follows:-

#### **Claimant's Case:**

The claimant gave evidence. He stated that he had been employed as a General Manager, working on a 7 day week, in the hotel owned by the respondent company. He also resided on the premises as part of his position. The respondent was owned by directors that resided in America. He was cited in the respondent's company's details on the Companies Registration Office register as a Secretary - Assistant but explained that it was only a paper exercise. He was not a shareholder. The main bookings in the hotel were of American tourists who would stay for a week at a time. The claimant would bring them on excursions and would have to be on the premises during their stay.

Yearly in August, except 2009, he would travel to America and work at a convention for a 4 day period to promote the hotel in Ireland. The claimant told the Tribunal that he was unable to take any annual leave during his 11 years service with the respondent. At a meeting on 27 July 2010 he was advised the hotel would close and he should apply for a redundancy payment, of which he received.

On cross-examination the claimant stated that the hotel was not busy at all times over his years service but he had to be available at all times to attend to clients. The Managing Director had instructed him to do so. When asked he said that he had a contract but had never signed it. He did have authority to sign cheques up to the value of € 2,500.00 and hire staff, determine their wages, hours of work and annual leave. He had also invested money in the business to pay bills but had been reimbursed. He told the Tribunal that he had complained that he had not been given time to take annual leave. At the height of business there was 15 staff, including himself. In 2010 there was only a maintenance man and himself. He had not been given prior notice of his termination but was aware of several previous occasions when the business was proposed to be sold but the sale had fallen through.

**Respondent's Case:**

The respondent did not call any witnesses to give sworn evidence.

**Determination:**

The Tribunal have carefully considered the sworn evidence adduced by the claimant in this case. The Tribunal finds the claimant had ample opportunity to avail of his annual leave during his tenure with the respondent and therefore his claim under the Organisation of Working Time Act, 1977 fails.

Loss having been established the Tribunal awards the sum of € 2,580.00, this being four weeks wages, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)