

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

employee –**Claimant**

against

Employer - **Respondent**

under

CASE NO.

UD1214/2011

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran

Members: Mr F. Moloney
Mr F. Barry

heard this claim at Dublin on 17 October 2012

Representation:

Claimant:

Respondent:

The determination of the Tribunal was as follows:

The claimant was employed in the respondent's restaurant from January 2009. The respondent's position was that he was an assistant manager. The claimant's position was that he was employed following an advertisement for a senior restaurant manager.

In the summer of 2010 the respondent employed a further assistant manager. Apart from the directors the respondent then had a general manager (GM) and four assistant managers. The respondent had around twenty four waiting staff at this time. Due to a downturn in business by November 2010 five of the waiting staff had been let go as well as the assistant manager hired that summer.

There was a dispute between the parties as to whether the effect the tough trading conditions were having on the business were discussed at management meetings. On 9 December 2010 the managing director (MD) met the claimant in the presence of GM and at that meeting told the claimant that one of the remaining assistant manager positions was being made redundant and the claimant had been selected as the candidate for redundancy as he was the most recently hired

assistant manager. There was a dispute between the parties as to whether the claimant was offered alternative work. The respondent's position was that the claimant was offered the option of carrying on as a waiter/ barman whilst retaining the same rate of pay as he had received as an assistant manager. The claimant's position was that no such offer was made. It was common case that 9 December 2010 was the claimant's last day working for the respondent; he received one week's pay in lieu of notice.

During February 2011 the claimant came across an advertisement on a jobs website for a senior manager with the respondent. The respondent's position was that they had no knowledge of this advertisement and in any event they had not hired anyone as a result of it, rather a further assistant manager position had been declared redundant since the claimant was let go.

Determination:

The Tribunal is satisfied that a redundancy situation existed within the management category at the respondent in December 2010. Whatever the provenance of the advertisement tendered on behalf of the claimant the Tribunal is satisfied that the respondent did not employ any additional staff in any managerial position at that time or since. The claimant was selected for redundancy based on LIFO, which is an objective criterion. Having considered the evidence of the parties as to whether the claimant was offered alternative work the Tribunal, on balance, prefers that of the respondent. In these circumstances the Tribunal is satisfied that the selection of the claimant as the candidate for redundancy was not unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)