

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**

**CASE NO.**

UD2234/2010

EMPLOYEE - *claimant*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr D. Hegarty  
Mr J. Flavin

heard this appeal at Cork on 11th June 2012

#### **Representation:**

Appellant(s) : Daniel Snihur, Independent Workers Union, 55 North Main Street, Cork

Respondent(s) : Cathal O'Sullivan, Whelan Solicitors, Grattan Court, Cork

**This being an appeal by the employee against the decision (ref: 087180-ud-09/RG) of the Rights Commissioner dated 8<sup>th</sup> September 2010.**

The determination of the Tribunal was as follows:-

#### **Background:**

The claimant was employed by the respondent on a part-time basis as a Kitchen porter from April 10<sup>th</sup> 2008. He also worked for another employer during his time off from the respondent. There were no real problems until a new Head Chef was hired, his son was also employed as a Kitchen Porter.

He normally worked the later shifts and would often come in to find dirty dishes lying around the kitchen. He would contact the hotel to find out what his working hours were. Sometimes they were changed and he would get a call. On week commencing July 19<sup>th</sup> 2009 he was rostered for three days. He had no hours for the following week. For week commencing September 2<sup>nd</sup> 2009 he was rostered for one – two days. But he did not turn up for work as he was told not to. His last day he worked was July 17<sup>th</sup> 2009.

#### **Appellant's Position:**

The claimant gave evidence. He stated that there had been no problems with his work and was never late for work. The claimant's colleague (AN) informed him the Head Chef (HC) had told him the claimant should not attend work. In early August 2009 he met the General Manager (GM) in the underground car park. AN was present nearby. He asked her about his hours and was told there was no job for him. He was never contacted to attend work and had not left the respondent's employment.

He gave evidence of loss.

On cross-examination he said he could not recall if he had told the Rights Commissioner about meeting GM in the underground car park and what she had said to him. He told the Tribunal that he had tried to contact the hotel on numerous occasions.

AN gave evidence. He had worked 18 months with the appellant. He was a full-time Kitchen Porter. He was present in the underground car park when the appellant spoke to GM, He heard the appellant ask about his hours and was told there were none at the minute.

**Respondent's Position:**

GM gave evidence. She explained that the Head Chef compiled the rosters in pencil which were then typed up at reception. These rostered hours were compiled with the needs of the hotel in mind. When the appellant did not turn up for work some one was called to replace him. She had no recollection of a conversation with the appellant in an underground car park.

On cross-examination she stated changes had been made in the past with the appellant's hours at his request. She could not understand why the appellant had left.

HC gave evidence. He stated that he had not cancelled the appellant's hours. It would have to put by the Functions and Banqueting Manager. It was recorded in the log book that the appellant had not turned up for work.

On cross-examination he had tried to contact the appellant on a number of occasions. He could not understand why the appellant left.

**Determination:**

The Tribunal have carefully considered the sworn evidence adduced and submissions made by both parties in this case. The Tribunal finds that proper procedures were not carried out by the respondent in this case in dealing with the claimant and finds the claimant was unfairly dismissed within the definition of the Unfair Dismissals Acts. The Tribunal awards the claimant the sum of € 2,000 under the Unfair Dismissals Acts 1977 to 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)