

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE – **Claimant**

UD1008/2011

RP1362/2011

MN1132/2011

WT410/2011

against

EMPLOYER - **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 P. Hurley

Members: Mr T.L. Gill
Ms H. Henry

heard these claims at Ennis on 13 December 2012

Representation:

Claimant:

In person

Respondent:

Mr Stephen Nicholas, Nicholas, Nolan Solicitors,
Parnell House, 50-52 Parnell Street, Ennis, Co. Clare

The determination of the Tribunal was as follows:

At the outset the claims under the Redundancy Payments Acts, 1967 to 2007, the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn.

This being a claim of constructive dismissal it fell to the claimant to make his case.

The claimant was employed in the respondent's seafood restaurant (the restaurant) on two occasions, initially for some fourteen weeks in the spring and summer of 2007 and then, following his return from a trip to Australia, from February 2008. At all times the claimant was employed as a barman/waiter and it was common case that the claimant was a good employee.

The claimant's position was that right from the start of the first period of employment he encountered foul language being directed at him by the restaurant manager (RM). From April 2008 the respondent issued all staff with written contracts of employment and an employee handbook

which contains a grievance procedure.

It was common case that the respondent's general manager (GM), who had responsibility for both the restaurant and the respondent's adjoining bar facility (the bar) and to whom RM reported, noticed from time to time that there was tension between RM and the claimant. It was further common case that, on most occasions, the claimant told RM that he could cope with the situation.

The claimant's position was that GM was well aware he was having difficulties with RM and referred the Tribunal to incidents involving the emptying of a mop bucket, verbal abuse at a staff wine tasting, and an occasion where he had spoken to RM in the wine cellar and burst into tears when talking about his treatment at the hands of RM.

On Saturday 4 December 2010 at around 8-30pm it was common case that there was an exchange of foul language between RM and the claimant, initiated by RM and in view of customers, which led the claimant to storm out of the restaurant through the kitchen announcing that he had quit. The claimant suffered a melt-down at this point and GM attempted to console him, without success, for some 30 minutes.

The claimant was given time off, including his normal days off, until Friday 10 December 2010 in order to cool down. In the event the claimant called to see GM on Sunday 5 December 2010 but was still unwilling to return to work. The claimant confirmed his decision not to return to work in a phone call with GM on Thursday 9 December 2010. There was a further phone call between the claimant and GM on Sunday 12 December 2010 during which the claimant was offered the option of moving to either the bar or an associated restaurant (the associate) in Ennis. The claimant rejected this offer on the grounds that the victim of a bully should not be moved. The respondent's position was that the claimant had called for RM to be moved or even dismissed.

Determination:

The respondent's grievance policy calls for a grievance to be raised either verbally or in writing. The Tribunal is satisfied that the claimant raised his grievance verbally with GM on a number of occasions prior to 4 December 2010. The Tribunal accepts the claimant's evidence of his bursting into tears in the wine cellar as an example of when this was done. The Tribunal, whilst noting that RM was not called to give evidence in defence of this claim, is satisfied that GM knew, or ought to have known, that RM was causing problems for the claimant. Accordingly, the Tribunal is satisfied that, given the prior history, the verbal assault on him by RM on 4 December 2010 was such as to shatter the bonds of mutual trust and confidence which must exist in an employment relationship and to justify the claimant's decision to walk out. The claim of constructive dismissal succeeds and the Tribunal awards €8,000-00 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)