

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE - *claimant*

CASE NO.

UD1467/2011  
MN1548/2011

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 D. Moore  
Mr J. Flannery

heard this claim at Tullamore on 2nd April 2013

Representation:  
\_\_\_\_\_

Claimant(s) :

Respondent(s) : No appearance by or on behalf of respondent

### Summary of Evidence

The claimant was employed by the respondent restaurant from March 2008. She worked 26-28 hours per week carrying out general kitchen duties. She made a number of complaints to the Rights Commissioner service under the Organisation of Working Time Act and the Terms of Employment (Information) Act resulting in awards been made in her favour. However the respondent did not comply with the decisions of the Rights Commissioner.

In May 2010 she was told that her employment was going to be terminated without explanation. She subsequently contacted her solicitor and a series of correspondence ensued between her solicitor and the respondent, part of which suggested the respondent considered that her employment was not terminated but rather that she was on reduced hours. The claimant felt that she could not return to work because the respondent had not complied with the decisions of the Rights Commissioner concerning her terms of employment. It remained the position that the claimant may not receive adequate terms and conditions of employment including holiday pay.

In those circumstances the claimant felt that she had no choice but to leave her employment due to these fundamental breaches of her employment rights. Throughout this time the claimant remained on sick leave and unable to work. She has not sought alternative employment since the termination of her employment in June 2011.

### **Determination**

The Tribunal is satisfied that both parties were properly notified of the hearing. The Tribunal is satisfied based on the uncontested evidence of the claimant that she was constructively dismissed from her employment. The Tribunal finds that the appropriate remedy is one of compensation and in that regard the Tribunal must take into account that the claimant has been unfit for work since the termination of her employment in June 2011. Therefore the Tribunal must apply section 7 (1) (C) (ii) of the Unfair Dismissal Acts 1977 to 2007 and in so doing awards compensation of €984.00 under the said Acts.

As the claimant resigned from her employment her claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 fails and is hereby dismissed.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

