

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE,  
- *claimant*

CASE NO.  
MN1325/2011

UD1235/2011  
WT507/2011

against  
EMPLOYER - *respondent*

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley  
Members: Mr. W. O'Carroll  
Ms H. Murphy

heard this claim at Galway on 1st February 2013  
and 29th April 2013

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

Claimant(s) :  
Respondent(s) :

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 was withdrawn by the claimant's representative during the hearing.

#### **Respondent's Case**

The respondent company operates as a hotel in the west of Ireland. The respondent's financial controller gave evidence that the business was in a distressed state when she was appointed to her position in September 2010. The company had a huge revenue bill and staff wages amounted to 60% of the company's turnover. There were 170 – 200 employees on the payroll in January 2011, 110 of whom were actively working and there were no accurate holiday records of employees maintained by the company. The company engaged a number of consultants in an effort to make the business profitable. The company entered into a re-payment plan with the Revenue Commissioners and by February 2011 employees had been reduced to 95 through a combination of redundancies and natural wastage. The claimant's role as deputy operations manager was identified to be made redundant and

on 9 February 2011 the claimant was informed that the position was being made redundant. On 17 February 2011 he was offered a payment of €17,900 in full and final settlement of all statutory redundancy payment, notice period, all holidays owing and time in lieu. The claimant declined this offer but later that day accepted an increased offer of €20,000. The witness gave further evidence that the holiday payment figure was a best estimate made by her as there were no accurate holiday records maintained. She introduced a holiday policy from 1 January 2011. She was not involved in the redundancy selection process and the claimant's position has not been replaced. She accepted that the company placed an advertisement in local paper in April 2011 seeking to recruit employees. She told the Tribunal that it is common to recruit employees in the summer season as that is the nature of the business.

(PB) gave evidence that he was hired as a consultant in August 2010 and put a plan in place for the owners of the hotel in conjunction with the banks. He told the Tribunal that there was a lack of direction and management and the business had cash flow difficulties. It was clear to him that the hotel could not afford the existing management and staffing structure and he looked at what roles could be absorbed into other roles. He had several meetings with the management team of the hotel prior to executing the plan. On 17 November 2010 he made a presentation to the management team including the claimant. As part of that presentation a new organisational chart was shown to the management team explaining the re-structuring of the business. He invited the members of the management team to offer alternative plans that they may have. The claimant's position was not part of the proposed new structure and he confirmed to the claimant on 7 February 2011 that his position was being made redundant. He gave evidence that he asked the claimant to consider other positions within the hotel and revert to him. He told the Tribunal that he had a discussion with him concerning a purchasing role but the claimant felt that this position would be inappropriate as it would be a step down for him. He accepted that he did not have a record of this discussion. He met with the claimant on 17 February 2011 along with the previous witness. The claimant was represented by a work colleague at that meeting and his redundancy was confirmed to him. The claimant was ultimately paid an amount of €20,000 later that day following the termination of his employment. His position has not been replaced and the business is performing reasonably well now and still has its payments plans in place. He told the Tribunal that he finds it bizarre that the hotel placed an advertisement seeking to recruit employees in April 2011 and he confirmed that no duty manager was hired as a result of the advertisement.

### **Claimant's Case**

The claimant gave evidence that he commenced working for the respondent in May 2005. He was employed as an operations/duty manager and was responsible for the day to day running of the hotel. He reported to the general manager. He regularly worked 55/60 hours per week and gave evidence that these extra hours were recorded on time sheets. In November 2010 he was invited to a meeting with (PB). At that meeting he (the witness) made a presentation showing how employees could multi-task and how costs could be reduced. He was not told at that meeting that his position could be made redundant and never had a meeting with (PB) in January 2011 in relation to his proposed redundancy. He was called to a meeting on 7 February

2011 by (PB) who informed him that they had no option but to make him redundant. He was given a letter explaining the position. He was not happy with the contents of the letter and took it away with him for consideration. He met with (PB) and the financial controller again on 17 February 2011. He was offered a payment of €17,900 which he refused to accept. This offer was later increased to €20,000 and he accepted this offer. He accepted that he signed a letter accepting the payment in full and final settlement of his redundancy payment, notice period, and all holidays and time in lieu owed to him. However he gave evidence that he was under pressure to sign the letter as he was told that if he did not sign it he would have to wait two or three years for his money. He told the Tribunal that he did not have a redundancy insurance policy.

He gave further evidence that he does not accept that his position was made redundant and told the Tribunal that three duty managers who reported to him remain in employment. He was not offered an alternative position by the hotel and was not offered a purchasing job. He gave evidence that a record of his working hours is recorded electronically in the Human Resources Department of the hotel. He received four weeks holidays annually but has not been paid his full entitlements for holidays and public holidays due as he regularly worked beyond 39 hours per week. He did not receive any public holiday entitlement in 2010. Since the termination of his employment he was unemployed for approximately eight months. He has been in employment since November 2011 and earns €500 per week.

He accepted that he was provided with a contract of employment by the respondent and was told to seek advice by the financial controller after he rejected the offer of €17,900. He received advice from the Citizens Advice Bureau and from his solicitor between 7 and 17 February 2011 and accepted that he signed for his cheque of €20,000 but he did so under severe pressure.

At the commencement of proceedings on the second day of the hearing the respondent's representative made an application to have the case dismissed on the basis that a settlement agreement had been agreed and signed between the parties dated 17 February 2011, prior to the commencement of the proceedings. Having considered the matter and having recalled the claimant to give evidence surrounding the circumstances of the settlement agreement the Tribunal was of the view that the case should proceed.

The conference and banqueting manager gave evidence that she was the claimant's manager at the time he was made redundant. She told the Tribunal that the claimant was a key person in the hotel and she worked very closely with him. She attended the meeting of 17 November 2010 and confirmed that the possibility of redundancies was raised at that meeting. However she never believed that the claimant was going to be made redundant as he was a key person. She thought that any redundancies would be further down the chain of management. In February 2011 she was told by the owner known as (R) that the claimant was going to be made redundant. She was shocked and upset by this as she was left to manage the hotel with just a few junior managers.

She confirmed that following the claimant's redundancy a revenue manager known as (C) was

appointed on a temporary basis. She subsumed the claimant's work into her role. She attended the meeting where the claimant received his settlement figure. She told the Tribunal that the claimant was very distressed at this meeting. She confirmed that the claimant never told her that he was offered an alternative position by the respondent.

The former Financial Controller of the respondent company gave evidence that he worked for the respondent from April 2009 until September 2010. He told the Tribunal that his workload with the respondent was very onerous and he was not allowed to hire anybody to assist him in his duties. He gave evidence that the respondent was growing sales and made an operating profit of €1.9 million in 2009. However the respondent had to make payments to its parent company which was heavily in debt and this tipped the respondent into a loss making position. He told the Tribunal that wage costs in the respondent company varied between 35% to 43%. He gave evidence that he was instructed on several occasions by (R) to find a way to make the claimant redundant.

### **Determination**

The Tribunal is of the view that in effecting the termination of the claimant's position by reason of redundancy that no procedures whatever were employed by the respondent. In this respect the decision to dismiss the claimant by reason of redundancy is impugned. The Tribunal is not satisfied that the claimant was offered any real alternative position. Taking those circumstances into consideration the Tribunal finds that the claimant was unfairly selected for redundancy and therefore unfairly dismissed within the meaning of the Unfair Dismissals Acts. The Tribunal notes that the claimant secured alternative employment approximately eight months after his dismissal by the respondent company albeit at reduced earnings from those he was earning with the respondent company.

Taking all the facts into consideration the Tribunal, being cognisant of the fact that the claimant has already received a lump sum payment awards the claimant the sum of €9,000.00 under the Unfair Dismissals Acts 1977 to 2007.

The Tribunal is satisfied based on the claimant's own evidence that he received his statutory holiday entitlements and therefore his claim under the Organisation of Working Time Act 1997 fails and is hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

