

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE – *claimant*

CASE NOS
UD1268/2011
MN1373/2011
WT516/2011

against

EMPLOYER – *respondent*
under

UNFAIR DISMISSALS ACTS, 1977 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: Ms E. Kearney BL

Members: Mr P. Pierson
Mr P. Trehy

heard this claim at Tullamore on 21st March 2013

Representation:

Claimant:

Respondent: In person

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant gave evidence. Her employment terminated on 26th January 2011. She was at work in the kitchen of the respondent's restaurant when the chef called her to the phone. The managing director told her he had no more work for her. There had been no warning and neither was there any reason to believe her job was at risk beforehand.

The claimant had no recollection of a conversation with the managing director in November 2010 in which he informed her that she would be required to work over the Christmas period and therefore she should not book flights home. The claimant did go on holidays over Christmas but she was adamant that she had agreed the time off with her supervisor, who in turn informed the managing director, before she went.

Respondent's Case

The managing director gave evidence. The claimant went on holidays in December 2008. He gave her permission and wrote the days she off into the diary. In 2009 the claimant booked

flights before asking him for the time off. When she told him of her plans he asked her to tell him first if she wanted to take time off. He did not issue the claimant with a warning.

In November 2010 the managing director met with the claimant and told her that he needed her to work over Christmas and that she was not to take leave over the Christmas period. The claimant went on holidays and was not available for work for almost 3 weeks. When she returned the managing director only became aware of her return after she had been rostered to work 4 days by her supervisor. He told her to go. He assumed she had gone on holidays without his permission but he did not seek an explanation.

Determination

The Tribunal considered the evidence adduced. There was a conflict of evidence on the issue of whether or not the claimant had obtained permission to take holidays over the Christmas period of 2010. In the event the claimant went on holidays. As soon as he was aware that the claimant was back at work he dismissed her immediately. The managing director did not apply any HR procedure in his dealings with the claimant. He did not give her any opportunity to explain her absence from work. He did not formally request that she attend a meeting with him and therefore her right to representation at such a meeting was never an issue. An alternative sanction was not considered.

The Tribunal finds that the claimant was unfairly dismissed and awards her the sum of €3,111.00 under the Unfair Dismissals Acts 1977 to 2007,

The claim under the Minimum Notice and Terms of Employment Act succeeds and the claimant is awarded the sum of €366.00 being 2 weeks' pay.

The claim under the Organisation of Working Time Act 1997 is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)