

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
EMPLOYEE

CASE NO.
UD252/2011

-claimant

RP293/2011

MN254/2011
WT69/2011

against

EMPLOYER
under

-respondent

**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: Ms K. T. O'Mahony B.L.

Members: Mr. J. Hennessy
Mr. F. Dorgan

heard this claim at Thurles on 3rd October 2012

Representation:

Claimant:

Respondent: No representation listed

There was no appearance by or representation on behalf of the respondent. The Tribunal is satisfied that the respondent was properly notified of the hearing of this case.

Summary of Evidence:

The respondent owns and operates a fast food restaurant franchise. The claimant was employed as a manager with the previous franchisee before the franchise was transferred to the respondent on 1 December 2010. The previous franchisee told the staff that they would have the same terms and conditions under the transferee/the respondent.

On 2 December 2010 the new owner told the claimant that he was no longer manager of the outlet and that his wages would be reduced. The claimant had an arrangement with the previous owner that he could take holidays after Christmas to return to his home overseas as his partner was due to give birth. The claimant explained this to the new owner and she was not willing to honour the arrangement.

Some days later the new owner sent the claimant a text message inviting him to a staff meeting.

All of the staff were in the restaurant and the new owner told all the staff to go to the upstairs and told the claimant to wait downstairs. The meeting took a half an hour and he waited downstairs. When the new owner came down she told him he would not have the same pay or hours. When the claimant told her that his former employer told him they were to remain the same after the transfer of the franchise to the respondent she became very angry and swore at him in Russian. She told him that it was her business and uttered very bad words. She told him to leave.

Determination:

Based on the uncontroverted evidence of the claimant, the Tribunal finds that the claimant was dismissed. As the respondent did not attend the hearing to offer any evidence to discharge the onus of proof that rests on the employer under s.6 (6) of the Unfair Dismissal Acts, the Tribunal, applying s.6 (1) of the Acts, deems the dismissal to be unfair. Accordingly, the claim under the Acts succeeds. Having heard evidence of loss the Tribunal awards the claimant the sum of €21,164.00, as compensation under the Unfair Dismissals Acts, 1977 to 2007.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, succeeds, and the Tribunal awards the claim the sum of €814.00, this being the equivalent of two week's pay, as compensation in lieu of notice.

The claims under the Redundancy Payments Acts 1967 to 2007 and the Organisation of Working Time Act, 1997, were withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)