

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE,

CASE NO.  
UD110/2012  
RP81/2012  
MN58/2012  
WT28/2012

against

EMPLOYER  
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: Ms. M. Levey BL

Members: Mr. F. Moloney  
Mr. M. O'Reilly

heard this case in Dublin on 15 May 2013

Representation:

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Claimant(s):  
No legal or trade union representation at the hearing

Respondent(s):  
No legal representation

The determination of the Tribunal was as follows:-

Claims were brought under unfair dismissal, redundancy, minimum notice and working time legislation in respect of a waitress's employment with the respondent restaurant. It was stated that the employment had begun in April 2006, that the claimant's last shift worked had been 6 June 2011 and that a P45 had been issued in late July 2011.

It was stated that the claimant had been the victim of a robbery on 6 June 2011, that her left arm had been injured and that she had not worked since then. She was, however, fit for work from the start of August but her manager said that there was no work for her at that moment. She did not know what to do because she had no money on which to live. She asked her manager to give her a letter or P45 because Social Welfare asked her to get it if she wanted to get Jobseeker

Allowance. She owed three months' rent to her landlord and did not have any other option.

The claimant had been hoping to get her job straight away. She was informed by other staff that the respondent had hired new staff while the claimant was ill. In September of that year the claimant missed a job-offer e-mail because she checked it too late. In December 2011 she asked the owners of the respondent for redundancy but got no reply.

The respondent's defence was that the claimant had requested her P45. The claimant had been a casual worker with the respondent who had regularly changed shifts. The respondent was very sorry that the claimant had been attacked and had tried to keep in contact with her. The claimant had given the respondent a couple of doctor's notes for two weeks but had not presented herself for work until the start of August 2011. The claimant had been covered with doctor's notes up to June but it was six weeks later that the claimant had presented herself for shifts. As soon as shifts were available the respondent had offered them with no reply.

### **Determination:**

At the hearing the claimant said that she was proceeding with unfair dismissal and redundancy claims. She declined to proceed with minimum notice and working time claims. Accordingly, the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and the Organisation of Working Time Act, 1997, are deemed to have been withdrawn.

The appeal under the Redundancy Payments Acts, 1977 to 2007, fails because the Tribunal was not satisfied that the claimant's job had been redundant.

With regard to the unfair dismissal claim, it was noted that the claimant had only lodged a claim form in January 2012. It was felt that the respondent had not wanted to end their working relationship with the claimant and had wanted to help her. However, the claimant had asked for her P45. The respondent had been willing to give the claimant work once she was fit but it appeared that the claimant had allowed legal advice to get in the way. In September 2011 the claimant had only had to say she wanted work. The evidence suggested that outside influences had got in the way but the claimant should have responded to offers rather than merely seeking her P45. The Tribunal accepted that language might have been an obstacle but it was noted that a director of the respondent had e-mailed the claimant in September 2011 about upcoming work if the claimant was not "fixed up" after asking for her P45. A subsequent e-mail from the same director to the claimant stated that the respondent had assumed that the claimant "had moved on", wished her a lovely Christmas and asked her not to be a stranger.

It is the unanimous finding of the Tribunal that the claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

