

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
-claimant

CASE NO.
UD2306/2010

against

EMPLOYER-*respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. R. Maguire, B.L.
Members: Mr. T. Gill
Mr. P. Trehy

heard this claim at Tullamore on 6th December 2012

Representation:

Claimant:

Respondent:

Background:

The respondent is a bar/ lounge and hotel entity. The claimant worked there as a cleaner initially.

Claimant's case:

The claimant gave evidence to the Tribunal via an interpreter. The claimant worked for the respondent on two separate occasions: from August 2008 to June 2009 and from September 2009 to September 2010. The claimant explained that initially she worked washing dishes and cleaning duties. She was then asked to iron sheets. She thereafter washed sheets and cleaned rooms, cleaned toilets; prepared the restaurant, disposed of the rubbish, further she moved containers outside of the premises. She also swept the restaurant floor and cleaned up after the parties. Her rest breaks were mostly interrupted.

During both periods of employment she did not get a contract of employment. She did not get a written statement regarding disciplinary procedures or grievance procedures nor for dismissal procedures.

The claimant's pay slips were opened to the Tribunal. She was not able to ascertain from her payslips if she was paid the correct amount of pay as her hours were not noted on them. She brought this matter before a rights commissioner and an award was given to her

Almost every day she had to work extra hours and she did not get paid for the hours. She did not get paid extra for working on public holidays or for working on Sundays. She also brought this matter before a rights commissioner and an award was given to her

She was often sent off the premises to purchase goods (for example French fries and burgers for the restaurant). To do this she often used her own car. Sometimes she was not paid for the goods that she bought. It was also said to her that she was not being paid for the goods because she probably stole them.

There was a problem with the trays that she had to carry from the basement to the kitchen area which was on the first floor. There was a problem with staff putting clean cutlery with the dirty cutlery; the management was aware of this and were complicit in this.

There was a problem with staff discarding food or food being spilled onto the floor area. She was not given health and safety training.

She had little enough English so she asked friends / family to speak to the management / proprietors to complain about the way she was treated. They were told to go away because they were not employees.

Soon after she had asked about her payslips her hours were cut to eight hours per week.

On 14th September 2010 she had an accident at work in that she fell and had to go to hospital for an x-ray and treatment. She said this was because she had to take a huge container from downstairs to upstairs, and often on the floor there was food thrown by the waitresses when they were clearing plates. The stairs were slippery and she fell. She resigned by letter dated 04th October 2010. The letter of resignation dated 04th October 2010, was opened to the Tribunal:

“After all my time working for you I am still without a contract and my payslips are always arrive late. I am not paid properly for Public Holidays and sometimes I am not paid at all. Thesame happens when I work late.

Very importantly, my working hours have been reduced sometimes as low as 7 hours in a week and I am unable to live on such a wage. Following my recent accident I am now fearful that the premises is a dangerous place to work.

I feel that I have little option but to leave my job and I am giving you one weeks notice of my intention to resign.”

The claimant gave evidence as to her loss. She stated that she was unfit for work until January 2011 from the date of her accident. She sent her curriculum vitae to various supermarkets and registered with FÁS. In May 2011 she got work of 22 hours each week, and sometimes gets a little more. She earns EUR 190 per week.

Respondent's case:

The Tribunal heard evidence from the co-owner owner of the respondent. She is also the company secretary. She is married to the other owner.

She was on the premises every day and the claimant did not report any difficulties to her at any time. The claimant worked with them on two separate occasions. The claimant had said to them that she was returning to her home country. There was no problem.

After a period of time the claimant returned to Ireland and called in to see her with her daughter. The claimant asked her if she could come back to work and she told the claimant that there was no work available. The claimant said she needed her job back she had children to care for and had a difficulty with money. She told the claimant that she had employed someone in her absence and she could not let the other woman go, but that she would look into things. After another period of time she re-employed the claimant.

The claimant did not mention anything to her about her hours that had been allocated to her or anything about a contract of employment.

The duties of the claimant were cleaning, ironing sheets and washing dishes, amongst other things. The claimant and other workers took their own breaks. The chef gave them food. She was not aware of the claimant having to go to the shop. If the restaurant chef needed to purchase food the yardman went to purchase food or goods. The yardman got goods and returned with receipts. No money was given out of the till for these purchases unless there was a till receipt provided.

The claimant never approached her about her payslips. If there was a dispute about her payslip and hours paid/worked then the employees went to the office. She was not aware that the claimant went to the office about her payslips.

The claimant did not work more than her rostered hours; she did not have to work extra hours as she had said she did. The claimant's hours were posted on the roster board and she wrote her weekly hours down.

She was not aware of staff "making fun" of the claimant and she did not see staff "making fun" of the claimant.

The witness explained about the logistics of bringing crockery to the kitchen and what it involved was basically a landing and four steps. The claimant never appeared to be in difficulty and never complained about this.

When a letter arrived to state the claimant had a personal injury claim she had no knowledge about the claim before the letter. Neither she nor the staff were aware of the accident. On the day the purported accident happened the claimant had left work as per normal.

When she received the claimant's resignation letter she accepted it.

The Tribunal heard evidence from the manageress who worked in the restaurant and on the floor. She also prepared the rotas.

She explained that all staff got their breaks. She never asked the claimant to stay back and work extra hours. They did not ask the claimant to go to the local shop to purchase goods as they had a person to do that.

Regarding the transportation of plates and food to the restaurant they had a hatch which the waitresses used. She was not aware of anyone “making fun” of the claimant. She was not aware of the claimant falling and she was not aware of any injury. She was not aware that the claimant was unhappy.

The Tribunal heard evidence from the other owner who is the husband of the first witness. He concurred with the evidence given by the other witness’s for the respondent.

Determination:

The Tribunal finds that the Claimant was constructively dismissed from her employment. In the letter from the Claimant to the Respondent on 4 October 2010, she set out a number of matters that were of grave concern to her and stated that she was giving one week’s notice of her intention to resign. It was established that in fact she was correct in that letter to state that she had no contract, that she was not paid properly for holidays and that she was underpaid for her work. These matters were the subject of a recommendation and decision from the Labour Relations Commission that was not appealed by the Respondent.

Whether or not the accident that the Claimant complained of in that letter occurred as alleged, or not at all, as maintained by the Respondent, the failure by the Respondent to do anything at all on foot of the letter from the Claimant was not acceptable. No evidence was brought forward by the Respondent to show that they had a safe workplace. It is clear that the Respondent did not comply with vast swathes of legislation designed to regularise the employment relationship. In addition to the matters complained of by the Claimant, the employer apparently had two sets of payslips for the Claimant, and this matter was completely unexplained by the Respondent.

In all of the circumstances, the Claimant terminated her employment in circumstances that amounted to an unfair dismissal. The claim under the Unfair Dismissals Acts, 1977 To 2007, succeeds. The Tribunal finds that in the circumstances, having heard the evidence of the alternative employment found by the Claimant in May 2011, the appropriate award for the Claimant is EUR 4,880.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

