

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

UD123/2009

WT45/2009

CASE NO.

MN115/2009

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. J. Reid
Mr F. Barry

heard this claim at Dublin on 30th June 2009

Representation:

Claimant(s) : Ms. Pauline Codd BL instructed by:
Mr Stephen Woods, Sean Gallagher & Co, Solicitors, Grand Canal House,
1 Upper Grand Canal Street, Dublin 4

Respondent(s) : In Person

The determination of the Tribunal was as follows:-

Claimant's Case:

The claimant gave evidence. In November 1990 he commenced work on the premises with the previous owner. His brother also worked there as Head Chef and had been working there longer than the claimant. The rest of the staff working there also had long service. He worked alongside another chef (hereafter known as O) on most shifts and if he had to go home or could not come to work he informed O.

Things changed when the respondent took over the business in May 2008. The kitchen was redesigned leaving less room to work in and in stifling heat. On September 1 2008 he was working but was in pain. He had been attending physiotherapy for some time for a knee injury. He told O he would not be in for his shift the following day. O asked him why he did not just leave the job; he replied he could not as he needed the money. He did tell O he was thinking of going on a 3-4

day week.

On the afternoon of September 2nd he arrived for work and went to get changed. He heard a shout coming from the bottom of the stairs. The owner of the premises (hereafter known as TS) began swearing at him asking him where did he think he was going as he had left the job and told no one. He was told he had taken his name off the roster and to f**k off out of there. He was then accosted by the Manager and the General Manager. He was very upset and unsettled and attended his doctor the following day. His brother contacted him, told him his name had been taken off the roster and he was sacked. He went to his solicitor for advice.

On September 4th 2009 he received a letter from the Financial Director stating he had requested his P45. The claimant refuted he had written "P45" on the roster beside his name. He was asked to attend a meeting in the café a week later. His solicitor replied to state the claimant would not be attending the meeting.

The claimant stated TS was a very mean man and had verbally abused other staff including his brother. TS also seemed to have a problem with alcohol. He received his P45 and monies owed to him in October. He gave evidence of loss.

On cross-examination he again stated that he had not written the request for his P45 and holiday pay beside his name on that week's roster or any previous roster. O had spread a rumour he was leaving. When writing on other rosters beside his name was put to him, he replied it was not his writing. He stated that if he had requested his P45 he would not have turned up for work the following week. His brother had wrote the phrase "sacked by" and named the person. Since his dismissal only 2 of the original long serving staff of 14 remained working with the respondent.

The claimant's brother gave evidence. He had been employed on the premises for 18 years and had worked up to the position of Head Chef. When the respondent took over the business everything changed drastically. The premises were redesigned giving less space to work in. Duties were taken away from him, a new Head Chef was appointed and there was a lot of pressure on the staff to make money. He was also verbally abused by TS. He wrote a letter of complaint in June 2008 about how he was being treated.

He explained that he wrote out the rosters. The original was kept in the office but several copies were displayed in various areas and all staff had access to write on them. The first he heard about what had occurred with his brother was Wednesday morning. The General Manager told him TS wanted the claimant out. No warnings were given to the claimant. He took the claimant's hours off the roster. He did not know who had written P45 beside the claimant's name.

Respondent's Case:

The Respondent's Financial Director gave evidence. He was not present on the day in question and therefore had not heard or seen anything, although he did give hearsay evidence of what had occurred.

He wrote to the claimant on September 4th 2008 concerning his non-attendance at work and the request for his P45 and holiday pay. There was also mention of his serious allegations of his conduct by other staff. He was requested to attend a meeting on Tuesday September 9th. He received correspondence from the claimant's solicitor stating the claimant would not be attending the meeting and requested a copy of his contract of employment and the grievance and

disciplinary procedures. On September 16th 2008 he wrote to the claimant's solicitor stating the claimant had absented himself from work, had removed his hours from the roster and requested his P45.

The claimant had not been dismissed but had left the premises telling a staff member that he was fed up with the place.

On cross-examination he stated that the claimant had requested his P45 on the roster on 2 occasions. He could not understand why the claimant had arrived for work on the Tuesday if he had left the previous weekend. He did not accept TS was abusive to the claimant on the day. Turnover of staff was quite common in their business. Since the respondent had taken over the business opening hours had changed, opening longer and later into the evening.

When asked by the Tribunal he answered that he did not know if there was a dignity at work policy available to staff.

Determination:

There was no independent evidence brought by the company. A portion of the evidence by the respondent's Director (and representative) was hearsay evidence and whilst the Tribunal accepted this evidence we must attach the appropriate weight to it.

The claimant's evidence was corroborated by his brother and having reviewed all of the documentation handed in and all the evidence given during the hearing, the Tribunal finds in favour of the claimant.

Accordingly, the Tribunal awards the sum of € 40,000 under the Unfair Dismissals Acts, 1977 to 2007. Loss having been established, the Tribunal awards the sum of € 3,200, this being eight weeks wages, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

No evidence was adduced in relation to the claim under the Organisation of Working Time Acts, 1997 and therefore the claim fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)