

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE

-Claimant A

CASE NO.  
UD554/2009

EMPLOYEE

-Claimant B UD555/2009

against

EMPLOYER

-Respondent

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. P. Pierce  
Mr. G. Whyte

heard this claim at Dublin on 2nd February 2010

#### **Representation:**

Claimants: Mr. Pat O'Donoghue B.L. instructed by Ms. K. Mackey, MRCI,  
55 Parnell Square West, Dublin 1

Respondent: No appearance or representation on behalf of the respondent.

#### **The determination of the Tribunal was as follows:**

The Tribunal is satisfied that the respondent was duly notified of the hearing. Neither the respondent nor a representative on its behalf attended the hearing.

#### Claimant A:

Giving evidence Claimant A stated that he was recruited from Bangladesh for a position with the respondent. He commenced employment on the 7<sup>th</sup> July 2003 but did not receive a contract of employment. When he commenced employment he was informed he would not be paid for a number of weeks while he trained in role. Subsequently, he was paid €160.00 per week for 72 hours work. Claimant A worked in both the respondent's restaurants, which were located in Clontarf and Malahide. Some three years into his employment, Claimant A received a wage increase to €180.00 per week. By 2008, Claimant A earned €350.00 per week in addition to gratuities and he worked six days per week.

On the 19<sup>th</sup> October 2008 Claimant A was informed by his employer that he would have to accept a pay cut to €250.00 per week if he wanted to continue to work for the respondent. As Claimant A

was then earning €350.00 per week he informed his employer that he could not continue to work such long hours for €250.00 per week. The employer informed him that he could not continue to afford to pay €350.00 per week and he told the claimant to leave. Claimant B was also present at this meeting and was dismissed. Later that day Claimant A telephoned his employer who informed him that he was no longer required to work in the restaurant as his position had been filled.

Claimant A attempted to find employment after he was dismissed but was unsuccessful in securing new employment until the 15<sup>th</sup> May 2009. His wages for the position vary between €450.00 and €600.00 per week.

Claimant A refuted the respondent's position on form T2 that he had been informed some six months previously that the lease on the restaurant was coming to an end.

Claimant B:

Giving evidence Claimant B stated that he was also recruited from Bangladesh for a position with the respondent and he commenced employment on the 7<sup>th</sup> July 2003. He worked 72 hours per week and he worked in both of the respondent's restaurants.

Claimant B confirmed that on the 19<sup>th</sup> October 2008 their employer informed them that they would have to accept a reduction in their wages to €250.00 per week or they could not continue in their employment. When they protested that they could not continue to work the same hours for €250.00 per week they were told to leave the restaurant.

Claimant B secured new employment in November 2008 until April 2009. He earned €300.00 per week in this employment and received free accommodation. He subsequently secured further employment in July 2009. Claimant B now earns approximately €350.00 to €400.00 per week but does not receive accommodation.

**Determination:**

Based on the claimants' uncontested evidence the Tribunal finds that the claimants were unfairly dismissed. The Tribunal was not satisfied with Claimant A's attempts to mitigate his loss and taking this into account, award Claimant A the sum of €5,000 under the Unfair Dismissals Acts, 1977 to 2007. Claimant B is awarded the sum of €5,600 as compensation under the above Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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