

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employer– *appellant*

CASE NO.  
UD1087/2008

against the recommendation of the Rights Commissioner  
in the case of

Employee – *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. J. Goulding  
Ms. M. Mulcahy

heard this claim at Dublin on 22 December 2008

Representation:

Appellant: In person

Respondent: In person

This case came before the Tribunal by way of an employer (the appellant) appealing against the recommendation of a Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2001 and reference number r – 058823 –ud- 07/EH.

The determination of the Tribunal was as follows:-

#### **Appellant's Case:**

A director of the appellant gave evidence. The respondent was employed as a waitress. A decision was made early in 2007 to sell the business as a going concern. The tendering process was completed. All staff members were informed that a tender had been accepted and they would transfer to the new owners. 29 staff transferred to the new owners.

There was a delay in completing the sale of the business. Staff members were leaving and there was a downturn in business and as a result they stopped serving food for the two weeks before the sale was completed. The respondent was paid her regular wages for these weeks. The sale of the business was completed on 12 October 2007. The respondent was paid until 19 October 2007.

The respondent contacted the appellant's HR manager because she was unhappy with the new arrangements.

**Respondent's Case:**

The respondent did not give evidence.

**Determination:**

The Tribunal is satisfied that a transfer of undertaking occurred in this case. The respondent and 28 other staff transferred to the new owners when the business was sold. The Tribunal finds that the appellant did not dismiss the respondent. The claim under the Unfair Dismissals Acts, 1977 to 2001 fails. The recommendation of the Rights Commissioner is upset.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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