

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYER

CASE NO.
UD162/2009

– *appellant*

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE

– *respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Donegal on 22 May 2009
and 13 October 2009

Representation:

Appellant: Mr Terry MacNamara, IBEC, 3rd Floor, Pier 1, Quay Street,
Donegal Town, Co Donegal

Respondent: Mr Martin O'Rourke, SIPTU, Port Road, Letterkenny,
Co. Donegal

(This matter came before the Employment Appeals Tribunal by way of an appeal by an employer (*hereinafter the appellant*) against a recommendation of the rights commissioner under Unfair Dismissals Acts, 1977 to 2007, in the case of an employee (*hereinafter the respondent*), recommendation r-060100-ud-07/EOS dated 6 January 2009).

The determination of the Tribunal was as follows: -

Appellant's Case:

This appeal centred on a breach of confidentiality in the appellant's nursing home. On Tuesday 25 September 2007, a patient was admitted to the appellant's nursing home from hospital. A discharge letter containing the patient's personal medical information was faxed through to the nursing home from the hospital. On 8 October, the hospital's Director of Nursing informed

the Matron of the appellant's nursing home that an employee of the H.S.E. had found the faxed discharge letter on the counter of a supermarket. The appellant's Matron said she would look into the matter. On the 12 October, the Matron and the Director of the appellant nursing home, the Director of Nursing had a meeting to discuss further details of the incident. On 16 October, the Director of Nursing advised the appellant to inform the patient's next of kin of the incident.

A meeting was arranged for 19 October where both the respondent and the Nurse who admitted the patient into the appellant's nursing home, were present. Both the respondent and this Nurse were informed of the incident and the involvement of the Director of Nursing, the H.S.E. Inspectorate Team and the patient's next-of-kin. Both staff members were asked to give a written statement as to their whereabouts on the day in question (i.e. the day the letter was found in the supermarket). They were also urged to treat the matter with the utmost confidentiality.

The meeting on 19 October lasted approximately an hour after which time the respondent returned to her duties. Shortly thereafter, the appellant noticed that the telephones were not being answered in the usual manner and discovered that the respondent had left her position without permission and was in the porch in front of the premises, having a conversation with the Building Supervisor. The appellant approached both people and realised that the respondent had informed the Building Supervisor of the incident, having stated to him that she felt the finger of suspicion was being pointed at her. The Building Supervisor and the appellant advised the respondent to return to her position as this behaviour could lead to her implicating herself. Ten minutes later, the second Director of the appellant nursing home discovered the respondent still in conversation in the porch with the Building Supervisor. The respondent was advised that she was not being accused of anything and to give her full co-operation to the investigation. The respondent handed her keys to the Building Supervisor and left the premises. The Nurse-on-Duty on the day of the patient's admission immediately gave her written statement as to her whereabouts on the day of the incident.

The appellant asked the Building Supervisor to speak with the respondent, as they were friends, to ascertain if she had any further information to add. Through the Building Supervisor, a meeting was arranged for 20 October. The respondent provided a written statement confessing to copying, removing and intending to provide the letter to a relative of the patient without the permission from the Nurse-on-Duty or the Matron.

On 24 October, the H.S.E. conducted an unannounced full inspection of the appellant nursing home, raising the issue of the breach in confidentiality. The appellant advised the H.S.E. inspectorate team that they would forward all the findings of their investigation as soon as possible to the H.S.E. and the Director of Nursing.

On 25 October, a meeting was held between the appellant, the respondent, the Matron and, on the respondent's request, the Building Supervisor. The respondent was asked if she understood the serious nature of the breach of confidentiality offence to which she replied she "would be seeking legal advice". A verbal warning was given to the respondent for leaving the office on 19 October without permission.

The respondent requested a meeting on the 31 October with the Matron and the appellant, and she asked the Chef in the nursing home to attend as a witness. The appellant again explained the reasons for the verbal warning and asked the respondent if she accepted any responsibility for

the breach of confidentiality offence, to which she replied that she had no comment. The appellant advised the respondent that as she was guilty of the offence, she would be removed from her position in the office. The appellant stressed that they were under no obligation to do so but that they would like to offer her an alternative position as a carer. The respondent was guilty of gross misconduct but was a good worker and well thought off, so the appellant offered her this alternative post. The respondent queried the hours and salary of the new position and said she would think about the offer. She requested that a full report be provided to her and requested to take her remaining annual leave to think about the new position.

On 2 November, the respondent dropped a letter for the Directors of the nursing home expressing her wish to appeal the verbal warning and the consequences of the gross misconduct. On receipt of this letter, the appellant realised that the working relationship had broken down and the respondent was clearly unhappy. On 6 November, the respondent requested a meeting with the nursing home Directors but, as they were unavailable, she wrote to them requesting exact details of the carer position. The appellant's reply to the respondent suspended her for five days with pay pending the outcome of the investigation.

As a result of the breakdown in the relationship between the appellant and respondent and their loss of trust in the respondent, the appellant withdrew the offer of alternative employment. The letter stating this to the respondent also clearly stated that the result of the breach in confidentiality offence was dismissal from her post, and not a demotion to carer, as she believed. The appellant's letter also contained details of the appeal process. As a result of the appeal conducted by an upstanding member of the community (*hereinafter referred to as KB*), the decision to dismiss the respondent was upheld, and a letter dated 3 December informed her of this.

Respondent's case:

In her sworn evidence, the Chef confirmed that she had attended the meeting with the respondent on 31 October 2007. In attendance had also been a Director of the nursing home and the nursing home Matron. At the meeting, the respondent sought clarification on whether the warning she had received at the previous meeting was a verbal or written one. The Director told her that the warning was not a written one and that she "was smart" and knew that it was for speaking to the Building Supervisor on the porch.

The Director asked the respondent if she had any remorse for what she had done and she replied that she was not in a position to comment, and she repeated this throughout the meeting. At that stage, the Director was agitated because the respondent had not apologised for what she had done. He felt that she was no longer suitable for the office job and was offering her the old position, which she had as a carer. The respondent asked if she was being demoted from office administrator to carer and the Director had replied that this was the case. When the respondent asked what her hours and rate of pay would be in the carer position, the Director had replied that he would fit her into the roster as best he could. The appellant had then contended that this offer was therefore not an offer of her old job back because she had been full-time in her old job. The Matron then confirmed that the offer of the job of carer was with full-time hours. When the respondent requested this offer in writing, the Director and the Matron agreed to post it to her. By this stage of the meeting, the respondent was crying.

The Chef attended the meeting as a witness and was not there to speak. However, she felt that she had to ask and clarify what the respondent would be employed to do from that day forward.

The Director said that the respondent would have to give over the office passwords to his wife. At that stage, the respondent requested a few days annual leave and this was agreed.

The Chef confirmed that she was aware of the investigation, which was conducted by KB subsequent to this meeting. She had been contacted by the Director while on her day off and asked to meet with KB. The Director had suggested that they meet at 3.00pm and she had suggested 7.00pm. Because 7.00pm was too late in the evening, the Director had said that KB would contact her himself. KB had telephoned her around lunch time, apologised for phoning her on her day off and told her that he would not take too much of her time. He said that he already had the facts of the case from his meeting with the respondent and the Director, and he only wanted to know if she thought that the meeting which she had attended had been fair or unfair. The Chef had replied that it had been fair in the way the respondent had been able to ask questions and get answers but, having to ask if the warning was a written or verbal one and getting demoted was a bit unfair. She said that this was her personal opinion and that the fairness or unfairness of the meeting depended on how a person looked at it. KB concluded the telephone call by thanking her and apologising again for phoning on her day off. The telephone call lasted ten minutes at most and only one question had really been asked of her. Neither she nor the respondent received a report of the meeting.

In cross-examination, the Chef confirmed that the Director had twice asked the respondent if she had any remorse for what she had done and her reply had been that she “had no comment”.

The Chef agreed that the Director’s telephone call to her had been to try to set up a meeting with her and KB. It had been on her day off and she had not been available. He had wanted to arrange a 3.00pm time and she had said 7.00pm so both had agreed that KB would telephone her himself.

Replying to Tribunal questions, the Chef confirmed that, at the meeting on 31 October, the respondent had asked the Director what the warning was for and he had replied that it was a verbal warning for her speaking to the Building Supervisor on the porch. The Building Supervisor, who was in maintenance in the appellant’s nursing home, had been the respondent’s representative at the previous meetings. The Director had gone on about remorse but he did not explain that it was remorse for what the respondent had done. The meeting had got heated and the respondent was told that management had lost confidence in her.

When asked if it was her understanding that remorse was for speaking to the Building Supervisor, the Chef replied that the issue of the lost letter was never mentioned at the meeting but she had presumed that being remorseful was about losing the letter. She had been in the kitchen when the respondent asked her to go to the meeting. The respondent had told her that the meeting was over the letter that had gone missing, though no one said what the meeting was actually about. It had been the respondent who had asked for the meeting with management and had asked the Chef to represent her at the meeting. The Chef was clear that the sanction from the meeting was demotion. The meeting had lasted about fifteen minutes and the respondent had been upset.

The Chef presumed that by her comment “not in a position to comment”, the respondent wanted to get legal advice.

In her sworn evidence, the respondent said that she commenced employment with the appellant’s nursing home in December 2005, where she worked as a carer until November 2006.

On the recommendation of the then Matron, she was promoted to administrator where her duties included doing the staff wages, rosters, invoicing fees, liaising with staff, nurses, pharmacy, doctors, fund raising, assisting with H.S.E. inspections in the absence of the matron, providing cover as a carer or in the kitchen or laundry when others were on sick leave, etc. A director of the appellant nursing home at that time also had his own separate business, and the respondent had done work for him also. Despite the responsible role, the respondent only received two days training in doing the wages. She had been able to depend on the previous Matron until that person departed in May 2007. This situation continued until the new Matron was appointed in August/September 2007. An ex-director also departed the company after selling his shares in the nursing home. With the loss of these two people – the previous Matron and the ex-director – there was a lack of communication between management and staff and as there was no leadership, staff had to work on their own initiative.

The respondent's hours of work were from 9.00am to 5.30pm but she never finished work within those hours. There was a high staff turnover and no extra staff were employed. Staff morale was very low and the respondent had to cover when others were on sick leave. Because of the nature of the nursing home and because of her conscience to the needs of the patients/residents, the respondent had been unable to leave at her rostered finish time. Her wages were never discussed and she received nothing extra for the extra responsibility. Doing the staff roster and providing the extra cover that was required was a lot of extra time for her. Though no leadership was being provided, the Director took on the extra role of assisting the respondent with doing rosters so as to show leadership in the nursing home. However, his style of leadership was very strict and did not suit a nursing home. Though he understood that doing a roster took a significant amount of time, he implemented a three-strike policy whereby if he spoke to a person three times, they were out. He also said that once the roster was completed, no changes were allowed on it. Accordingly, because of this harsh environment, morale continued to deteriorate. The Director felt that the respondent would work in the office for three days and then on the ward for the remainder of the time while he and his wife worked in the office, but the respondent felt that the office work required even more time in order to keep up with things and she would have appreciated extra help in the office from the Director's wife.

The respondent confirmed that she and the Nurse-on-Duty at the time of the patient's admission were called to a meeting on 19 October. Present at this meeting were also two of the appellant's Directors and the appellant's Matron. At this meeting, the respondent was told that a patient's document was found in a supermarket. However, she was not asked any direct questions about this. The patient and the patient's family were close friends of the respondent. The respondent felt that any of the appellant's management could have approached her privately about this lost document, the document being a discharge letter, discharging the patient from a H.S.E. nursing home to the appellant's nursing home and containing such details as the patient's name, age, address and medical background. The patient's son had personally brought the patient to the appellant's nursing home. The discharge letter had not been ready for them at the time they were leaving the H.S.E. nursing home and they were told that it would be forwarded by fax to the appellant's nursing home. Had the letter been ready, the patient's son would have brought the letter to the appellant's nursing home himself. After assisting with the admission of his mother into the appellant's nursing home, the patient's son had asked for a copy of the discharge letter, once the appellant had received same. The respondent understood that normally, patient's families would have access to patient files and would go through the Matron for access to same. A discharge letter would not be a secret document.

The respondent was upset at the end of this meeting. She was asked to keep what had been said

there confidential. Mass was being celebrated in the nursing home when she came out of the meeting and as she was visibly upset, she had not wanted staff asking her any questions. She went to the office where she locked the cabinets but she did not lock the office because the Matron also operated from there. This was approximately 3.30pm/4.00pm. The respondent decided that she needed time to herself and so got her coat and bag and walked to the front door of the nursing home. The Building Supervisor, who knew that she and the Nurse-on-Duty had been at a meeting, saw that the respondent was upset and so had walked with her to the porch and had asked her what was wrong. The respondent explained to him that she felt that the finger of suspicion had been pointed at her over an issue and she felt that the appellant's management could have spoken to her privately about it. She did not tell the Building Supervisor what the meeting had been about. While she was talking to the Building Supervisor, the Director came out and the Building Supervisor told him that the respondent was upset about the meeting and that she felt that the finger of blame had been pointed at her. The Director had stated that the respondent was a "silly girl" and was being "far too sensitive", and he outlined some of the details of the case to the Building Supervisor. The Director asked the respondent to come inside and she had replied that she needed some time to herself. The Director had then gone back inside. Some seconds later, the other appellant's Director passed on his way out. The Building Supervisor who was friendly with the Director told him that the respondent was upset about the meeting. This Director had replied that the appellant nursing home and the H.S.E. did not have a good relationship and that they – the appellant – were worried that the lost document had been a set-up. After the Director left, the respondent gave her keys to the Building Supervisor and also left because she felt that she could not go back into the nursing home there and then.

Approximately ten minutes after leaving the nursing home, the respondent received a text from the Matron saying that she – *the Matron* – was going to telephone her and that she should answer. When the Matron telephoned, she apologised to the respondent if she – *the respondent* – had been offended and asked if they could meet in the respondent's home that evening. The respondent replied that as she needed time, she preferred not to meet that evening, and they agreed to meet instead on the following Sunday.

The next day – Saturday 20 October – the respondent got a telephone call from the Building Supervisor asking her to come to a meeting that he had been asked to organise in the nursing home that evening at 8.00pm, to which she agreed. She brought a written statement to that meeting within which she outlined that she had made a photocopy of the discharge letter for the patient's son and, unbeknown to her, she had lost it. The appellant's second Director had said that he was relieved that the lost letter was not a H.S.E. set-up. The respondent had explained that the patient's family were willing to confirm in writing that they had asked for a copy of the discharge letter and the second Director asked her to get a copy of this letter from the family. The other Director had come to the meeting dressed in a suit and tie and said that he had an execution to do. The respondent was asked if she could show remorse. She was unsure what she was being asked to show remorse for (i.e., the lost letter, leaving the nursing home during working hours, etc.) and so had replied that she could not comment. This Director had replied to this by saying that he was thinking of moving her back to her position as a carer. The respondent had replied that as she was going on annual leave, she was definitely not going to comment, and this refusal to comment had definitely agitated people. She was not sure if she had apologised because of being in shock at the news that she may lose her job in administration.

The respondent received a warning during the meeting on 20 October. The appellant said that they were thinking of transferring her from administration to carer and that this was a warning

when she had not shown remorse. Subsequent to that date, the appellant was on annual leave. While on annual leave, she spoke to her union representative. As they did not know what the warning could have been for, she had telephoned the Matron and asked for a copy of the appellant's disciplinary procedures. The Matron had said that the Director had said that the respondent was not to be given anything. The respondent subsequently received a copy of her contract of employment while on annual leave and this had contained the disciplinary procedures. The respondent returned from annual leave on 31 October and asked to meet with the Matron and the Director. The meeting occurred around 1.00pm. The respondent asked the Chef to be her representative at this meeting and told this to the Matron. The Building Supervisor had been her representative at the meeting on 20 October but she had changed representatives to the Chef, as she felt uncomfortable with the Building Supervisor because of his close relationship with management. The respondent asked for this meeting so as to establish what the warning was for, and if it had been a verbal or written warning. The Director's reply had been that the respondent was a smart enough girl and knew what the warning was for and that it was not a written warning. When asked again by the respondent to clarify the reason for the warning, the Director said that it was for speaking to the Building Supervisor on the porch. He asked the respondent to show remorse for her actions and she had replied that she could not comment. She had expected the Director to say that the warning was for losing the letter. The Director had gone on to say that the appellant had lost faith in her doing the job in administration and were therefore putting her back to her old job, being that of carer. The respondent was very upset at this because she had only wanted this meeting so as to get clarification on the warning. She asked what was being offered to her by way of hours and rates of pay of the job as carer and was told that she would be slotted in to the roster where needed. She had replied that this was not an offer of her old job back as carer because previously, her position as carer had been full-time. The Matron had then agreed that full-time hours as a carer would be available to her. The respondent then asked the Director to confirm that she had received a verbal warning for speaking to the Building Supervisor and that she was being demoted from her position in administration to a position as a carer. The Director confirmed that this was the case. The respondent asked for this confirmation in writing, together with the rates of pay and hours of work being offered to her as a carer. At that stage, the Chef asked for clarification as to when the role of carer would take effect and was told that it would take effect immediately after the handover of keys and office passwords to the Director's wife. The handover was done after the meeting, which only lasted fifteen minutes, and then the respondent took an agreed six days annual leave.

The respondent appealed against the demotion and the warning by way of letter dated 2 November 2007 to the appellant. She received a letter dated 2 November 2007 wherein she was offered a position as a carer within the nursing home. However, as the rates of pay or the hours of work of this position were not included in this letter, the respondent telephoned the appellant and explained that she would not make a decision on the job offer until this information was received. Two days subsequent to this, the respondent received a telephone call from the Director's wife informing her that she was further suspended for five days. The respondent asked as to when her suspension had started as she had been on annual leave.

The respondent received letter dated 15 November 2007 from the appellant wherein they withdrew the offer of the job of carer that they had made to her because she had lost the patient's letter.

The respondent established her loss for the Tribunal. Subsequent to her employment with the appellant, she was employed in two jobs, an insurance company and a shop, from January until

April 2008. She went on maternity leave from April until October 2008, though claiming unemployment benefit during this maternity period. The respondent was also unavailable for work due to pregnancies subsequent to October 2008.

In cross-examination, the respondent confirmed that her employment with the appellant commenced on 8 December 2005. She was initially employed as a carer but had no medical qualifications. Subsequently, when employed as an office administrator, her duties included doing rosters, wages, etc.

The respondent confirmed that she received a contract of employment from the appellant and the appellant's disciplinary procedures were contained therein. She agreed that the first point in the disciplinary procedures under the title "gross misconduct" stated "*breach of or disclosure of confidential information which could be detrimental to the employer, residents or other staff*", and an employee accused of gross misconduct could "*if, on completion of the investigation and full disciplinary procedure, the Operation's Manager is satisfied that gross misconduct had occurred, the result will normally be summary dismissal without notice or payment in lieu of notice*".

(*A copy of the discharge/transfer letter was opened to the Tribunal.*) The respondent confirmed that this letter was addressed to the "sister in charge", and that she had photocopied and removed the copy of the letter from the nursing home. When asked why she needed to have access to medically sensitive information, the respondent replied that the patient's son should already have had a copy of the letter as he had been the patient's registered next-of-kin. He had asked for a copy of the letter. The Matron had not been available at the time and she – *the respondent* – knew the family well. She agreed that a nurse had been on duty at the time of the patient's admission and it would have been her responsibility to give a copy of the letter to the patient's son. As a friend, it had been her intention to give a copy of the letter to the family. In hindsight however, the letter should have been in an envelope or it should have been given to the patient's son when he was at the nursing home. The respondent accepted that such information should have been treated confidentially and should not have been lost.

The respondent recalled the meeting on 19 October when she and the nurse (Nurse-on-Duty at the time of the admission) were informed about the lost letter. She stated that she was not asked about the letter at this meeting. At that time, she had not realised that she had actually lost the letter. She was upset and felt the finger of suspicion was pointed at her because only she and the nurse were at the meeting. A hard-line stance was taken by the appellant at the meeting, even though they could have asked her privately about the lost letter. It was on the following day that the respondent gave the appellant her written statement on the matter. She denied that she had overstepped her role in taking a copy of the patient's letter for the patient's son and had then tried to cover her tracks. It was not common practice that relatives would ask for a copy of such information therefore there was no common procedure for dealing with such a request. There was no leadership in the nursing home thus it was a case of all-hands-on-deck when dealing with people's lives. The respondent did not accept that she had overstepped her mark. It was the patient's son who had requested a copy of the letter from her.

The respondent confirmed that she was given the right to appeal against the dismissal decision. Following on from the appeal hearing, the dismissal decision was upheld and same was communicated to her by letter dated 3 December 2007 from the appellant's Director. Replying to Tribunal queries, the respondent said that she thought the patient's letter was in her bag for almost two weeks. She had not missed it prior to being told that it had been found

elsewhere. It was not the case that she had been trying to hide it.

It was the case that relatives sometimes looked for details about patients in the nursing home and the procedure when this happens is to refer such people to the nurse-in-charge or to the Matron. However, the appellant was not a usually run nursing home and there were no hard and fast roles therein. The respondent had liaised with other relatives and had spoken to them about their patient family members. Her life was the nursing home.

Closing statements:

The appellant's representative written closing statement stated inter alia that the Unfair Dismissals Act, 1977 starts with the presumption that a dismissal is unfair unless there are substantial grounds to justify that dismissal. The appellant has shown that such substantial grounds existed when the respondent copied and removed from the nursing home, a sensitive medical document relating to a patient at the home. This act constituted gross misconduct as defined in the respondent's contract of employment. The substantial ground was further exacerbated by the respondent's failure to cooperate with the appellant's subsequent investigation. In dismissing the respondent, the appellant was merely following its own disciplinary procedures and, in line with those procedures, it allowed the respondent the right of appeal. Given the set of circumstances, the appellant acted in a reasonable manner in respect to a business charged with the care of sensitive medical data. The respondent's dismissal resulted wholly in respect of this act of gross misconduct. In coming to the conclusion to dismiss the respondent, the appellant also allowed for the fact that the respondent showed no remorse for the wrongdoing.

In addition to establishing substantial grounds justifying dismissal, it is also incumbent on an employer to show that it followed fair and proper procedures. In this context, the appellant contends that the principles of natural justice were applied, however some procedural flaws did occur. In line with this, the most significant thing was the appellant's decision to do the fair thing and offer the respondent her job back as a care attendant at the nursing home. In citing case Ud492/2008 (*Said Belarbi –v– Walls Leisure Limited*), the Tribunal determined that simply because there was a flaw in procedures does not automatically mean that a dismissal was unfair. In this case, the appellant contends that the substantial issue (i.e. the copying and removal of a sensitive medical document and the losing of same in a public place) outweighs the procedural defects.

In his closing statement, the respondent's representative stated that the respondent first received a warning from the appellant. She subsequently received a warning and a demotion and when she appealed against these two decisions, she was dismissed. The key question for the Tribunal is what transpired between the time of the warning and demotion decisions, to the dismissal decision. It was the respondent's contention that the appellant's investigation was fundamentally flawed in that questions that were put to the appellant were never addressed and the nature of the interview that the appellant conducted with the Chef over the telephone. If the appellant had intended to take disciplinary action against the respondent over the loss of the patient's letter, it was strange that same had not been highlighted throughout the investigative process. In light of same, the respondent was not given the opportunity to address perceived deficiencies in her performance during the investigation.

Determination:

The Tribunal carefully considered the evidence adduced to it during the course of this two day hearing.

The Tribunal accepts that the appellant initially told the respondent that she was being demoted but this was subsequently changed to summary dismissal. The letter of dismissal was received by the respondent subsequent to her informing the appellant that she wished to appeal against their decision to demote her. The Tribunal finds that the sanction of summary dismissal was disproportionate to the offence. While the respondent made an error of judgement in copying the letter so as to give same to the patient's son, and was liable to be disciplined, the Tribunal considers that she was grossly overworked, doing a job for which she was not trained. Furthermore, the procedures that were adopted by the appellant in dismissing the respondent fell far short of what could be considered to have been fair. Accordingly, the Tribunal dismisses the appellant's appeal against the recommendation of the rights commissioners under the Unfair Dismissals Acts, 1977 to 2007, by way of finding that the dismissal of the respondent was unfair. In line with the recommendation of the rights commissioners, the Tribunal considers that the most suitable remedy in this case is one of compensation. However, the Tribunal considers that the amount awarded did not take into account all the circumstances of the case, including the respondent's unavailability for work due to pregnancy. Consequently, the Tribunal varies the recommendation of the rights commissioners and awards the respondent compensation in the sum of €5,000.00.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)