

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYER - **Appellant (Employer)**

UD159/2010

against the recommendation of the Rights Commissioner **R-080063-UD-09**
in the case of

EMPLOYEE - **Respondent (Employee)**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. B. O'Carroll
Mr. M. McGarry

heard this appeal at Galway on 5 July 2011

Representation:

Appellant:

Ms. Miriam Guinane, Purdy Fitzgerald Solicitors,
Kiltartan House, Forster Street, Galway

Respondent:

In person

The determination of the Tribunal was as follows: -

This case came before the Tribunal as a result of an appeal by the employer (the appellant) against a decision of the Rights Commissioner under the Unfair Dismissals Acts **R-080063-UD-09** in the case of an employee (the respondent).

Dismissal being in dispute in this case it fell to the respondent to make her case

The respondent was employed in the respondent's public house from 9 December as a driver in the respondent's free transport service for their patrons. The respondent generally worked four nights a week some sixteen to twenty hours a week. From August 2008 the respondent was also working as a waitress/supervisor for the respondent with full-time hours between the two positions.

The employment was uneventful, with the respondent being highly regarded by the appellant, until

14 February 2009 when the respondent was forced to make cost savings. Among the measures implemented by the appellant the respondent reverted to solely driving, thus reducing her hours of work to those applicable to driving. A member of the bar staff was also put on reduced hours, a member of the kitchen staff who was on extended leave of absence overseas was asked to extend his period of absence.

With some reluctance the respondent accepted this situation and carried on with her driving duties. On 24 March 2009 the respondent was called in by the general manager (GM) following an allegation over irregularities in the provision of the transport service on 17 March 2009, a night for which the respondent had not been rostered to work. At the meeting on 24 March, at which a colleague accompanied the respondent, GM suspended the respondent with pay pending further investigation into the complaint. The respondent was offended that GM would not disclose the source of the complaint and resigned from her employment and stormed out of the meeting and threatened GM with an unfair dismissal action.

The respondent's position was that, whilst she accepted that she had resigned from the driving position in March 2009, she had been unfairly dismissed from her waitress/supervisory position in February 2009. The appellant's position was that the respondent had been subject to a reduction in hours rather than a dismissal in February 2009.

Determination

The respondent was employed on a full-time basis from August 2008 with her hours split almost 50/50 between the driving and waitress/supervisory positions. The Tribunal accepts the appellant's submission that what occurred in February 2009 was a reduction in hours and not a dismissal. The respondent having accepted that she resigned on 24 March 2009 the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)