

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE

CASE NO.  
UD1589/2011

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

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Ms. A. Gaule  
Mr. J. Maher

heard this appeal in Dublin on 8 January 2013

Representation:

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Appellant(s):

Mr. Joe Bolger, ESA Consultants, The Novum Building,  
Clonshaugh Industrial Estate, Clonshaugh, Dublin 17

Respondent(s):

No attendance or representation

The determination of the Tribunal was as follows:-

This case came to the Tribunal as an employee appeal under the Unfair Dismissals Acts, 1977 to 2007, against Rights Commissioner Recommendation r-0100206-ud-10/TB.

The background given to this case was that the appellant had started working for the respondent in 1988 and left in 1997 but recommenced in 1998. She again left the employment in 2010 and claimed that she had been constructively dismissed. Her case was that her treatment by her employer had been such that she had been left with no alternative but to resign.

Giving sworn testimony to the Tribunal, the appellant said that she been a waitress-cum-supervisor at the respondent's public house and that she had kept a diary in respect of her hours. She had received neither payslips nor records of her hours from the respondent. After she felt that her hours had been underestimated by the respondent she approached a national employment rights body (hereafter referred to as NERA). Her relationship of trust with the respondent had been damaged. She had no alternative but to leave on Friday 20 August 2010. It was alleged that her signature had been falsely put on documents. She had been afraid of her life to raise a grievance directly against her employer. She had not

been satisfied that the respondent had been keeping accurate records. NERA had conducted an inspection but the respondent had denied all wrongdoing regarding clocking-in or other record-keeping. The appellant alleged that she had been told to sign documentation or lose her hours and that her signature had also been falsified.

The appellant's average weekly pay with the respondent was submitted to have been €311.00. After her employment with the respondent she had been pessimistic about her chances of finding new employment given that she was over fifty. However, she did phone people she knew to ask about employment. As she was unsuccessful she eventually started a jewellery business in November 2011.

No evidence was offered at the Tribunal hearing by or on behalf of the respondent.

**Determination:**

On the uncontested evidence of the appellant, the Tribunal allows the appeal under the Unfair Dismissals Acts, 1977 to 2007, and upsets Rights Commissioner Recommendation r-0100206-ud-10/TB. However, the Tribunal was not satisfied that the appellant had made all possible efforts to make applications to obtain new employment subsequent to believing that she had no option but to leave the respondent. In all the circumstances of the case, the Tribunal deems it just and equitable to award the appellant compensation in the amount of €10,263.00 (this amount being equivalent to thirty-three weeks' gross pay at €311.00 per week) under the said Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

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