

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE - *appellant*

UD1188/2011

PW209/2011

TE154/2011

against the recommendation of the Rights Commissioner in the case of

EMPLOYER– *respondent*

Under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
PAYMENT OF WAGES ACT 1991
TERMS OF EMPLOYMENT (INFORMATION) ACTS 1994 AND 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr P. Pierson
Mr P. Trehy

heard this claim at Tullamore on 19th March 2013

Representation:

Appellant:

Respondent:

The determination of the Tribunal was as follows:-

This case came before the Tribunal as an appeal by an employee against the recommendation/decision of the Rights Commissioner reference numbers r-096255-pw-10/JC, r-096256-te-10/JC and r-096257-ud-10/JC.

Respondent's Case

The sales manager gave evidence. The appellant started in December 2004. She was one of two

beauty therapists employed by the hotel. Revenue declined badly in 2009 and the spa treatments fell off by about 50%. To protect the jobs both therapists went on a three day week in March 2009. Each beauty therapist worked a 24 hour week on flexible hours.

Unfortunately business continued to decline and in October 2009 the appellant was made redundant. This was necessary because the spa was not covering costs. The sales manager did not draw up a matrix to select a beauty therapist for redundancy. The appellant was less well qualified than her colleague.

The appellant was not replaced. A trainee was taken on for a few months under a FAS scheme but she was not qualified and she had no experience and therefore there was no question of her giving treatments to clients. When the sales manager was asked if the trainee could have offered a beauty treatment to the appellant's mother in January 2010, he replied that he knew nothing about that phone call.

Appellant's Case

The appellant's mother told the Tribunal that she had phoned the spa in January 2010 and spoke to the trainee. She assumed that if she booked a treatment it would have been carried out by the trainee.

The appellant gave evidence. In March 2009 she and her colleague were put on a 3 day week. As a result they could both claim social welfare for the 2 days they did not work. After a time their manager wanted them to each work 2 full days and 2 half days. This arrangement would have cost them money as they could no longer claim social welfare. Their manager suggested that they work the new rota and continue to claim social welfare.

At first the appellant had accepted her redundancy. She was called to a meeting and told she was being let go. She was promised a reference but never got one. She accepted that her colleague was better qualified.

The appellant attended a training course in the hotel after being made redundant. On several occasions she saw the trainee in the spa wearing a therapist's uniform and there were notices in the cloakroom offering treatments. The appellant was annoyed to find that she had been replaced.

Determination

The Tribunal carefully considered the evidence adduced and are satisfied that it does not uphold the contention that the dismissal was unfair. The Tribunal accepted the cogent evidence of the respondent that the termination of the appellant's employment was grounded in a severe decline in revenue that necessitated and justified the decision to make the appellant redundant. The appeal under the Unfair Dismissals Acts 1977 to 2007 fails and the decision of the Rights Commissioner is upheld.

The appeals under the Payment of Wages Act 1991 and under the Terms of Employment Acts 1994 and 2001 also fail and the decision and recommendation of the Rights Commissioner are upheld.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)