

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
Employee

CASE NO.  
RP513/2005 MN840/2005

against

2 Employers

and

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy SC

Members: Mr. D. Moore  
Ms. B. Fell

heard this appeal in Wexford on 26 July 2006 and on 3 January 2007

Representation:

\_\_\_\_\_

Appellant(s) :

In person

Respondent(s) :

The first-named respondent was represented on 26 July 2006 by  
Mr. David Lynch, Waterford Corporate Services Limited,  
30 Ballinakill Court, Ballinakill, Waterford

The appellant made a claim for redundancy and minimum notice payments against the first-named respondent above. However, the hearing of the case was deferred from July 2006 to 3 January 2007 so that the second-named respondent could be joined to the proceedings. The said second respondent was joined so that the Tribunal could determine whether or not the appellant's employment was transferred from the first respondent to the second.

## **Appellant's Case**

After the appellant had almost nine years' service with the first-named respondent its principal came into her office on the morning of Friday 13 May 2005, informed her that he was selling the business to the second-named respondent and told her that he wanted her to work with the second respondent for two weeks just to get them started whereupon she would be back with him. However, he never took her back and she was issued with a P45 from the said principal of the first respondent.

The appellant rang the abovementioned principal on several occasions and left messages in his office for him to contact her but he failed to do so. In the meantime she applied to the second respondent for a job and was successful.

Having received no notice whatsoever from the principal of the first respondent, the appellant felt very hard done by and felt that she deserved better after almost nine years' service. She did not suffer unemployment after her employment ended but she did earn lower remuneration. The first respondent's principal had said that she would go to the second respondent for two weeks and then go back to him to work for his development company. That would not have been the same kind of work as she had done before but she did not mind. Other direct employees were indeed kept on. She sought redundancy and minimum notice awards from the Tribunal.

The appellant told the Tribunal that she applied for a position with the second respondent after she realised that the principal of the first respondent was not going to take her back to work for his development company. The second respondent had advertised with a view to recruiting someone.

## **Respondents' Case**

The first respondent argued that the appellant's employment transferred to the second respondent to whom he sold the business.

The managing director of the second respondent told the Tribunal that his company had bought from the first respondent a database which contained a list of clients but that his company had not committed itself to taking on any employee of the first respondent. The second respondent did take on two of the first respondent's employees on a temporary basis. The said employees then went back to work for the first respondent's principal. The claimant had been on loan to the second respondent which wanted the first respondent's database and not the first respondent's employees. The second respondent had brought a lot of experience from England.

## **Determination:**

On the balance of the evidence it seems to us that the appellant was not transferred when the database was sold and that there was no change of ownership of the business within the meaning of section 20 of the Redundancy Payments Act, 1967. Under the Redundancy Payments Acts, 1967 to 2003, we, therefore, find that the appellant is entitled to a redundancy lump sum from the first-named respondent based on her continuous reckonable service with the first respondent from her commencement date of 15 September 1996 to her termination date of 13 May 2005, her gross weekly pay of €777.45 and her date of birth which was 16 May 1974.

Regarding minimum notice, we measure the appellant's loss at the difference between her rate of pay with the first respondent and the reduced rate of pay she earned during the transition period. We measure that loss at €600.00. Therefore, the Tribunal makes an award against the first-named respondent and orders that the appellant be paid the said sum of €600.00 (this amount being equivalent to a gross pay differential of €150.00 per week for four weeks) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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