

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:
2 Employees

CASE NO.
UD1368/2005, RP615/2005
WT467/2005
UD1377/2005, RP616/2005
WT469/2005

against

Employer

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr. P. Casey
Mr D. McEvoy

heard these claims at Cork on 22nd February 2007

Representation:

Claimants: Ms Liz Scally B L instructed by
Diane Hallahan, Barry M. O'Meara & Son, Solicitors, 18 South Mall, Cork

Respondent: Mr. Larry Kenna, IBEC, Knockrea House, Douglas Road, Cork

The determination of the Tribunal was as follows:

Claimant's Case

Caroline McCarthy

The claimant commenced employment as a shop assistant with the respondent in 1975. Several years later she changed to part-time work. Up to April 2005 she never had any problems with her employer. A new general manager was appointed that month. By the end of April 2005 a staff meeting took place when the company indicated that redundancies and a change of work practices were forthcoming. The witness was not present at that meeting. Subsequent negotiations between the employees' trade union and the company proved fruitless and statutory redundancy remained the only available offer.

The claimant received correspondence from the respondent dated 31 May 2005 in which the

general manager formally informed the claimant that she was being made redundant with effect from 26 July 2005. That was the first official notification to the claimant that she was facing redundancy. On 23 June the witness signed an RP50 –Notification of Redundancy form in the general manager's office. That form stated that the claimant's date of termination was to be 4 August 2005. Later on 23 June the claimant received her P45 and outstanding payments to cover her holiday and notice periods. She was then told to "go whenever you like". The witness went home and never returned to work. She felt sad, devastated and upset at this development.

On 1 July 2005 the claimant received a phone call from the respondent telling her to return to work. The claimant was undergoing medical treatment at that time and instructed her solicitors to respond to the respondent's directions. A letter issued from those solicitors to the respondent on 4 July 2005. Earlier a group of workers occupied the respondent's premises in protest against the circumstances and conditions of their termination of employment. Further meetings involving the trade union ensued and that resulted in altered arrangements for the future of the respondent. Improved redundancy conditions were now offered to a reduced number of staff. The witness, who still considered herself redundant, had no intention of returning to the respondent, and supported the new improved redundancy conditions. The claimant became involved in an exercise where she put her name forward for voluntary redundancy to the trade union. The company did not select her in the revised arrangements. The witness never withdrew her right to statutory redundancy and continued to believe that she had been dismissed by reason of redundancy. In attempting to get that message across the claimant submitted a letter of resignation to the respondent in October 2005 "to bring closure to affairs". By that stage she had not received any statutory redundancy payment.

The witness told the Tribunal that once she was issued with her P45 she considered herself "gone" from the respondent. By 28 June 2005 she was aware of the new proposals and was a member of the union up to 23 June. She became so depressed and confused about the redundancy issue that she went to a doctor. She did not initially forward her medical certificates to the respondent as she felt she was redundant.

In cross-examination the claimant acknowledged that the employer did not sign her RP50 form. She also accepted that the trade union was representing her during meetings at the end of June 2005 and that she applied for voluntary redundancy through that organisation. At no time did she tell the union that they were not representing her.

Mary Walsh

The claimant began work with this company in June 1978. She was forced to go on long-term sick leave in 2000 and complied with the respondent's policy on that issue. The witness was still out on that leave in April 2005 when there was a change of management at the respondent's. A written notice issued by the respondent and a letter signed by the general manager both dated 31 May 2005 notified the claimant of her impending redundancy. On 22 June 2005 the claimant signed a statutory redundancy form-RP50. The company's accountant also signed that document on the same day. The following day the claimant called to the respondent's and collected her P45 and other outstanding payments. The claimant was in no doubt that she was being made redundant.

The witness later heard of a sit-in by several workers on the respondent's premises. The claimant

was called out of a subsequent meeting hosted by the trade union to discuss the evolving situation with the company. She was not entitled to vote on any proposals, as her subscriptions were not up to date. She had intended to return to work with the respondent in September 2005 but following her redundancy she had no desire to do this.

In cross-examination the witness agreed that she gave 18 October 2005 as her date of termination. She did that on external advice. She also acknowledged she volunteered for redundancy through the union subsequent to the revised arrangements negotiated between the respondent and the union.

Respondent's Case

The general manager commenced work with the respondent in March 2005. Together with the company's accountant they examined the finance of the business. Following unproductive talks with the mandate trade union the witness wrote to all staff at the end of May 2005 informing them of the closure of the respondent. In addition he also wrote notes to the two claimants notifying them that the company was making them redundant on 26 July 2005. The respondent was pleading inability to discharge their redundancy payments and therefore applied for lump sum claims for the two claimants. By late June 2005 the shop was facing imminent closure and a protest against the redundancy terms emerged. A new situation developed as a consequence of negotiations between the union and the respondent. That agreement allowed the respondent to continue trading and the union was to submit a list of those willing to take voluntary redundancy on improved conditions. The respondent only dealt with the trade union but it was clear to the witness that the claimants were aware of the changing situation.

Due to the changed circumstances the general manager contacted the redundancy section of the department of Enterprise, Trade and Employment. He detailed the altered situation and asked that statutory redundancy entitlements not be paid to those listed on RP50s submitted earlier to that office. The witness said he only submitted electronic versions of those forms and had held back on the signed forms until the shop was due to close at the end of June. The witness never discussed the withdrawal of those RP50s with the claimants. He had previously issued P45s to the claimants together with their notice and holiday pay where appropriate.

The general manager accepted that the RP50s issued to the claimants on 22 and 23 June 2005 were binding. However he maintained that due to the changing situation those signed documents were not fully binding until they were posted into the redundancy section. The respondent did not select the two claimants for voluntary redundancy. The witness gave reasons for its choice of eight employees chosen for voluntary redundancy. By early July 2005 the claimants were asked to return to work. The general manager did not accept that the two claimants were not part of the agreement between the union and the respondent. He also rejected the notion that their terms and conditions of employment changed as a result of that agreement.

The respondent continued to regard the claimants as employees. They engaged in correspondence with the company regarding their employment. That employer/employee link was broken in October 2005 when they resigned from the respondent.

Determination

The Tribunal were faced with two contrasting views during this hearing. It was the appellants' case that they were notified of their redundancy, signed and completed the required forms, paid their notice and holiday entitlements, and issued with their P45s. The respondent accepted those forms and payments were discharged but maintained that due to changing circumstances the claimants' relationship with the company changed subsequent to the issuing of those documents.

Having carefully considered the evidence the Tribunal finds in favour of the claimants under the Redundancy Payments Acts, 1967 to 2003. While the claimants continued to engage with the respondent up to October 2005 they were effectively dismissed from the company in late June 2005. The respondent never formally withdrew their notification of dismissal issued to the claimants on 31 May 2005. Such a withdrawal has to be accepted by the other party to make it binding. That did not happen. The respondent's contention that the RP50s were not binding until they were posted to the redundancy section is not acceptable as withdrawal of the redundancy offer.

The Tribunal awards the appellants under the above Acts their statutory redundancy payments based on the following:

<u>Name:</u>	Caroline McCarthy	Mary Walsh
<u>Date of Birth:</u>	24 May 1959	04 May 1963
<u>Date of Commencement</u>	28 August 1975	12 June 1978
<u>Date of Termination:</u>	04 August 2005	04 August 2005
<u>Gross Weekly Wage:</u>	€194.32	€444.38

Since a dismissal by way of redundancy is deemed to be fair it follows that the claims under the Unfair Dismissals Acts, 1977 to 2001 fall.

The appeals under the Organisation of Working Time Act, 1997 were withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

