

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
RP435/2006

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. A. Halpin BL

Members: Mr. J. Goulding
Ms. K. Garvey

heard this appeal in Dublin on 16 February 2007

Representation:

Appellant(s) :
XXXX

Respondent(s) :
Mr. Jas. St. John Dundon, Dundon Callanan, Solicitors, 17 The Crescent, Limerick

The decision of the Tribunal was as follows:-

Appellant's Case

On 26 March 1979 the appellant (hereafter referred to as M) joined the respondent hereafter referred to as R). She worked as a bookkeeper in R's accounts department. R was based at Terenure Road East. A local agreement in the early nineties made her hours 8.00 a.m. to 3.00 p.m.. She never had a contract.

In 2005 R informed staff that the Terenure Road site would be sold and that there would be a relocation to Millennium Park in the Naas area. M was offered the options of working at R's Naas site on existing terms and conditions or working at R's Merrywell site with a change of working hours. Neither of these options was suitable to M.

Giving evidence to the Tribunal, M said that she had asked R about compensation regarding the

move and the time that she would have to spend in her car. She received a negative response. She asked about redundancy. She received a negative response. She said that it would be a “nightmare” if she had to go to and from Merrywell for a 9.00 a.m. to 5.00 p.m. working day. A timetable of 8.00 a.m. to 3.00 p.m. would avoid the congestion. She had other commitments after 3.00 p.m. most evenings. She had subsequently found new employment which allowed her to continue with her interests.

Respondent’s Case

It was submitted that there had been no redundancy in that reasonable alternatives had been put to M (the abovementioned appellant).

Evidence was given on behalf of R (the abovementioned respondent) by its finance director (hereafter referred to as F) who said that he had led the relocation project including sale of the Terenure Road premises and procurement of the new one. He had negotiated with M. He met her and corresponded with her.

Asked if R had done all it could to keep M, F said that R had not been prescriptive at all. R had a valued team that it wanted to retain. R had asked them all if there was something R could do. R had been eager to facilitate all reasonable requests. R had previously facilitated M in relation to a holiday in Australia.

The Tribunal was furnished with a copy of a letter dated 3 November 2005 from F to M. The letter contained the following:

“It is our wish that you would facilitate this Company in reciprocating the goodwill that the Company has shown you over the last number of years. It is our preferred option that you would join the rest of the finance team in the new offices in Millennium Park. It is with reservations that we offer Merrywell as an alternative, but are willing to make this offer out of deference to the esteem with which you are held within this organisation.”

The letter had also stated:

The solution we can offer you is to facilitate your request to be accommodated in Merrywell. This will involve some substantial inconvenience in the manner in which we function. For instance, the document flow of incoming post will require an additional leg – from Millennium Park to Merrywell, together with the additional cost implication of same in order to facilitate your job. It will also mean that information will not be as timely as it currently is. The payment of suppliers will be further impacted by the delay in cheques being sent to Millennium Park for signature etc. we also lose the benefits of direct supervision. It will mean that source data records which are referred to by others in the Finance team will not be available to hand in the main office etc. There are many other examples. Notwithstanding these issues, we are still willing to accommodate your wish to work out of Merrywell.

As a quid pro quo I indicated to you that in order to accommodate your desire to be located in Merrywell, we’ll require you to work normal working hours of the Finance team there i.e. 9am to 5pm.

At the moment, in Rathgar we facilitate your early start (7am) and early finish (3pm) because of your physical proximity to the rest of the team. After 3pm as you know, when any of us require information and other documents, we simply descend the stairs, and dig the information out for ourselves from your office. This action on the part of other members of the finance teams is a direct facilitation of your desire to finish work at 3pm and over the years it has worked reasonably well. However, if you are going to be physically removed from the rest of the Finance team in a different building some miles away, the ability to get access to information while you are absent is likewise removed. Accordingly we need to be able to contact you during the working day to be able to make up for this.

If you are going to be the only part of the Finance team that is not present in Millennium Park, then the ability for a colleague to take a call from a supplier for instance, while you are absent is also removed. There will be no other person present who can “cover” for you.

I hope that you can see therefore why it is possible to accommodate your early start and finish time in Millennium Park, but not possible in Merrywell. Therefore, I’m afraid that should you wish to discharge your duties in Merrywell, we will require you to start at 9am and finish at 5pm.”

F told the Tribunal that R had had to recruit someone to replace M. R first obtained the services of a temp and then a fulltime person. R’s business had not decreased. In fact, it had grown slightly. R serviced clients at the clients’ own premises. M’s function was a back-up, support function.

Determination:

Having carefully considered the evidence adduced, the Tribunal is of the view that the new job was fundamentally different from what the appellant was doing in that the reporting times were fundamentally different from those which M had for twelve years. Accordingly, her post was made redundant.

Under the Redundancy Payments Acts, 1967 to 2003, the Tribunal finds that the appellant is entitled to a redundancy lump sum based on her continuous reckonable service from her commencement date of 26 March 1979 to her termination date of 30 April 2006, her gross weekly pay of €633.35 and her date of birth which was 13 December 1952.

Note- In the case of payments from the social insurance fund a statutory ceiling of €600.00 per week may be applicable.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

