

EMPLOYMENT APPEALS TRIBUNAL

Appeal Of:
Employee

Case No.
RP218/2006

against
Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. K. Buckley

Members: Mr. D. Hegarty
Ms. H. Kelleher

heard this appeal at Cork on 30th April 2007

Representation:

Appellant: In person

Respondent: In person

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant commenced employment with the respondent in October 1995. Her work consisted mainly of operating machinery but often she was asked to assist with packaging vegetables into bags that weighed from 2kg to 10kg and the appellant found the bags heavy. In the beginning the appellant worked approximately thirty hours per week but this was reduced to twenty-five hours per week.

In May 2004 the appellant became ill and was under doctor's care. She worked until the end of June 2004 until it became impossible for her to continue working. The appellant was certified unfit for work and she informed her employer of this with a letter that stated her sick leave was indefinite. The respondent did not request further medical certificates from her. The appellant underwent surgery in October 2004. She did not return to work after this.

In December 2005 the appellant heard her work colleagues had been made redundant. The appellant contacted the respondent who told her that as she was no longer a member of staff she was not entitled to redundancy. Some time later when she contacted the respondent again she was told there was a job for her and she should contact him when she was ready to return to work. The appellant told the Tribunal she is fit for work and has been working elsewhere on a part-time basis

since March 2006. The appellant's appeal for redundancy was lodged on the 20 April 2006.

Answering questions from the Tribunal the appellant confirmed she has not received a P-45 from the respondent. The appellant stated that she did not contact the respondent about the position that was available to her.

Respondent's Case:

The director of the respondent stated that the appellant was absent for one year on sick leave. The appellant provided medical certificates for indefinite periods. The appellant contacted him when other staff received redundancy. He was unsure whether or not the appellant was due redundancy. He later confirmed to her that her position was still there for her in the factory. This position is still available to the appellant.

Determination:

The Tribunal determined that the appellant was not made redundant. The appellant had been on sick leave and was now working part-time elsewhere. The evidence of the respondent was that the appellant's job remained open. The appellant agreed that she was not prepared to take up her old position. Nor was the appellant able to give a satisfactory response as to why she took so long to submit an appeal. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2003, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)