

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

RP161/2006
MN224/2006

Employee

RP523/2006

against

Employer

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: Ms. K.T. O'Mahony B.L.

Members Mr. G. Phelan
Mr. T. Kennelly

heard these appeals at Limerick on 11 September 2007

Representation:

Appellants: Mr. Philip Moloney B.L. instructed by Ms. Aoife Hennessey,
Sweeney McGann Solicitors, 67 O'Connell St. Limerick
For the first named appellant
Mr. Gerard Kennedy, SIPTU,
4 Church Street, St. John's Square, Limerick
For the second named appellant

Respondent:
Both Directors of the respondent

The determination of the Tribunal was as follows:

It was accepted at the outset that there had been no transfer of an undertaking when the ownership of the respondent changed in period before the events that led to these appeals. Both appellants had been employed for several years as salespersons in the respondent's shop, which sold porcelain, china, crystal and other giftware. The business was losing money and a decision was taken to change the product line. The new product line was to be up-market shoes and accessories with approximately twenty percent of the shop still dedicated to the previous products. The appellants were informed on 1 February 2006 that the shop was to close for a number of weeks for refurbishment. The appellants were offered continued employment on the same terms and conditions as they had previously enjoyed. They were offered training in another of the respondent's shops, which sells the same product line. The shop closed on 4 February 2006 and the

appellants were involved in the packaging of the remaining stock and remained in employment until 8 February 2006. The appellants both rejected the positions on offer at that time in the refurbished shop and left the employment on the basis that the offer of positions in the new shop did not constitute suitable alternative work. Their position was that they did not wish to work in a shoe shop; they considered the work would be more physical and would involve more climbing of stairs. The first named appellant was offered the option of working a trial period in the new shop but rejected it. The second named appellant left the employment before being offered a trial period. There was a dispute between the parties as to whether the respondent intended to pay the appellants during the period of the shop's refurbishment. In the event the shop opened in its new guise on 1 April 2006.

Determination:

As the respondent offered the appellants identical terms and conditions to those existing before the change in the nature of the business the only question that the Tribunal had to consider was the suitability of the alternative work on offer to the appellants. The Tribunal is satisfied that the respondent would have provided training in shoe fitting and in the computerised till systems. The Tribunal further accepts that there would have been a requirement to climb stairs on a more frequent basis and that the work may well have been more physical. Having given long and detailed consideration to these matters the Tribunal finds that the offer of employment in the new shop did constitute suitable employment in accordance with section 15 (2) (c) of the Redundancy Payments Acts, 1967 to 2003. Accordingly the appeals under those Acts fail.

In these circumstances the Tribunal finds that the first named appellant resigned from her employment. Accordingly her claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)