

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

MN849/2005

RP523/2005

against

2 Employers

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms M. McAveety

Members: Mr. D. Morrison  
Mr J. Le Cumbre

heard this appeal at Carrick-On-Shannon on 30th October 2007

Representation:

Appellant(s): Mr. Thomas J. Walsh, Solicitor, 1 Mill Lane, Main Street,  
Castlebar, Co. Mayo

Respondent(s): Alexis Mina BL instructed by Mr. John J. Quinn & Co, Solicitors, Earl Street,  
Longford

The decision of the Tribunal was as follows:-

#### **Respondent's Case**

The respondent M told the Tribunal that it had a number of shops in Ireland. The appellant commenced employment in 1989 in Drumshanbo. He did not encounter any difficulties with the appellant. In 2004 the appellant was ill and she was hospitalised for two to three weeks in a Dublin hospital. She was the only employee in the store in Drumshanbo. M visited her while she was in hospital. During the appellant's illness there was no one to open the shop. He visited the appellant in her home many times. The appellant was unable to return to work and the last time she told him this was in 2005. M closed the shop in February 2005. He kept the shop open from September 2004 to February 2005 to enable the appellant return to work and an employee from either Longford or Sligo deputised for the appellant. If the appellant had told him that she was returning to work he would have kept the shop open. The appellant could have worked in Longford or Sligo when she returned. The appellant's health improved but she was unable to return to work. He

never told the appellant that he would give her redundancy. On 7 October 2005 the respondent received a letter from the appellant's solicitor. The appellant's brother in law requested a meeting with M and M told him that he would look after the appellant. Business was quiet and he did not tell the appellant's brother in law that he would give the appellant a redundancy payment. He would not have closed the store if the appellant had not become ill. He kept the shop open for five months and he hoped that the appellant would return to work. He told the appellant's brother in law that he would give the appellant something when business was good.

In cross-examination he stated that he gave the appellant her P45 in 2005 and his accountant looked after it. He could not recall if he gave the P45 to the appellant's brother in law on the day that he met with him in June 2005. He was unsure of the date that the P45 issued to the appellant. When asked what was now in the premises he responded that he did not know. When asked that he did not give the appellant the opportunity to participate in redundancy he responded that he had no one to undertake work in the shop in Drumshanbo and he had to pay the rent. He did not tell the appellant that he would meet her regarding her entitlements. He had a discussion with the appellant's brother in law and he told him that he would pay the appellant something. When asked if he was agreeable to give the appellant redundancy and if he was aware that he could get a rebate he responded that he did not know that he could get a rebate. When asked in relation to the sequence of events in relation to the closing down sale in December 2004 and that the shop closed the end of January 2005 he responded that he thought the closing down sale was in December 2004. He then stated that the closing down sale was in February 2005. When asked if there was no work for the appellant he responded that he had no business.

In answer to questions from the Tribunal when asked when was the last time that he asked the appellant to return to work he responded two weeks before the shop closed in February. The appellant told him that she was not able to work and when the shop closed M was in hospital. His brother told him that the shop closed down and his other brother was his partner. The shop was opened after three to four months. M was ill in January and his brother who was a partner looked after it. The appellant told him that she was not able to work anymore. Four to five months later his brother opened a shop in the same premises and he has a temporary lease on the premises for one to two years. He had a good understanding with the owner of the premises. When asked if the sale was advertised he responded there was a notice in the window and it was not advertised in the local papers. He did not think that the appellant was an employee after the 30 September 2004. When asked when the P45 issued to the appellant he responded that his accountant prepared all the documents.

### **Appellant's Case**

The appellant told the Tribunal that she commenced employment in 1989 with the respondent. She became ill in September 2004 and was hospitalised in Dublin. She understood that she would return to work when she was better. She noticed a closing down sale in the shop in Drumshanbo around Christmas 2004 and the sale continued for a few weeks. She went to the shop and M's friend from Longford was there and he told her that he had received a notice to vacate the premises as it was closing down. She could not remember the date. The first P45 that she received was incorrect and that posed a difficulty for the Department of Social and Family Affairs. She had a discussion with M in her home regarding money and he told her that he would look into the matter.

Her brother in law had a meeting with M. When M called to see her she had intended returning to work when she was better but she did not receive letters about her return to work.

In cross-examination she stated that she had a serious illness. She had a good relationship with M

and he was a fair employer. When asked if she was able to return to work she said that she did not know. When asked if she expected M to leave the job open for three years she responded that she did not. She was not in a position to return to work in 2005. When asked if she told M that she would return to work when she was able to do so she responded that she did not know. She thought that the shop had closed in January or February 2005. She could not recall if M asked her to return to work. She thought that she would be able to return to work twelve months after her illness and she was taking medication for fifteen months. She is in receipt of an invalidity allowance. When asked if she was in a position to work in the other shops she responded that she had no way of getting there, as she was unable to drive a car.

### **Determination**

Having heard the evidence from both parties in this case the Tribunal is of the unanimous view that the respondent closed the shop in Drumshanbo in February 2005. The Tribunal find that a redundancy situation existed and that the appellant is entitled to redundancy under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria: -

Date of birth	28 October 1949
Date employment commenced	8 June 1989
Gross Weekly pay	€273.00
Date employment terminated	11 February 2005

The appellant is not entitled to minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

