

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
Employee

CASE NO.  
RP569/2006,MN721/2006

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: Mr D. MacCarthy S C

Members: Mr J. Browne  
Mr F. Barry

heard this appeal at Wexford on 9th January 2008

### **Representation:**

Appellant : Mr. Sean Kelly, ATGWU, Keyser Street, Waterford

Respondent : Ms. Helen Barry, IBEC, Confederation House, Waterford Business Park,  
Cork Road, Waterford

The decision of the Tribunal was as follows:

The appellant commenced employment with the respondent in February 1996. In the four years prior to her cessation of employment in January 2007 the appellant was subject to a seasonal lay-off from July/August of one year to the following January of the next year. As part of those lay-offs the respondent officially and formally informed the appellant when the lay-offs were commencing and also informed her when they were ending and invited her back to work at specified dates. As part of that established procedure the respondent wrote to the appellant in July 2006 advising her that a lay-off situation would commence on the twenty-first of that month.

The appellant wrote to the company on 29 September 2006 stating that as she had not been offered a resumption date for returning to work she had no option but to secure alternative employment and sought a redundancy payment. By reply of 4 October the respondent stated she was not entitled to a statutory redundancy payment. On 17 October the secretariat of the Tribunal received a T1-A form under the redundancy acts. A T2 form denying the claim was received by the secretariat on 6 December 2006. On 20 December 2006 the respondent wrote to the appellant telling her work is to recommence on 2 January 2007 and invited her to return to work. The appellant neither replied to that invitation nor reported for work that day or subsequently. The respondent felt that neither the position nor the appellant were made redundant.

## Determination

In reaching a decision on this case the Tribunal referred to section 8 of the original Act. Part (a) of that section favours the employer in this case as the employee had up to the time of cessation of employment a lay-off record for the four previous years. However, the Tribunal regarded the appellant's letter of 29 September 2006 as equivalent to the submission of a RP9 redundancy form. The employer in turn gave the equivalent of a counter notice and asked the appellant to return to work on 2 January 2007. The appellant was silent in her response.

In allowing the appeal under the Redundancy Payments Acts, 1967 to 2003 the Tribunal referred to part (c) of section 8 of the original Act and finds that the appellant was not unreasonable in refusing the offer of employment dated 20 December 2006 from the respondent. The following details are relevant in this case.

Date of Birth : 29 November 1960  
Date of Commencement: 15 February 1997  
Date of Termination: 21 July 2006

**NB-** Periods of lay -off: 25 July 2003- 12 January 2004  
6 August 2004- 12 February 2005  
11 August 2005- 5 January 2006  
21 July 2006- 2 January 2007 (according to respondent's records)

Gross Weekly Wage: €374.00- (according to claimant's T1A form.)

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 does not apply in this case and is therefore dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

