

**EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL(S) OF:**

Employee

**CASE NO.**

RP665/2006

MN857/2006

against  
Employer

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 N. O'Carroll-Kelly BL

Members: Mr M. Murphy  
Mr O. Nulty

heard this appeal at Cavan on 31st January 2008

**Representation:**

Appellant(s) : Mr. Declan Ferry, Assistant Organiser, SIPTU, Ashe Street, Cavan Town,  
Co. Cavan

Respondent(s) : Mr Garrett Fortune, Garrett J. Fortune & Co., Solicitors, 11 Church View,  
Cavan

The decision of the Tribunal was as follows:-

**Respondent's Case:**

The owner of the respondent business gave evidence. He explained that the appellant was employed in the shop that was attached to Cavan General Hospital.

He explained that the lease on the premises was up in April 2006 but was asked by the administration of the hospital to remain trading until the new franchisee was hired. On July 3<sup>rd</sup> 2006 he received notification that his lease was finally terminated. He told the Tribunal that he informed the appellant that same day. He stated, when asked, that he had informed her both verbally and in writing. He explained that he had written a letter to the appellant and left it beside the cash register, which was where all correspondence was kept.

The witness stated that he had received notification from the HSE (Health Service Executive) stating that the appellant could apply for a position with the new franchisee. The appellant applied for the position and was successful. She informed the witness of her news. When asked, he stated that he had offered an alternative position to the appellant on several occasions. She declined.

On cross-examination he stated that the appellant had been on leave from July 5<sup>th</sup> 2006. She arrived the day before the shop closed but she was not needed to work as it was all cleared up.

When asked by the Tribunal he stated that he had kept the original letter of notice and left her a copy in an addressed envelope by the cash register. He had no conversation with the new franchisee and a transfer of undertakings. When asked, he stated that the original lease with the HSE was for ten years. He said that he had advised the appellant to apply for the new job.

**Appellant's Case:**

The appellant gave evidence. She stated that the respondent had employed her for six years. She had no contract of employment.

In early July 2006 the owner of the business told her she was to take some annual leave. She explained that she took three weeks leave and never returned to work. She agreed that she had been offered alternative employment in the respondent's second shop but that the offer had not been confirmed or followed up. She stated that she had not received the letter of notice from the respondent. She had received her P45 and had asked for a redundancy payment but was informed that it was not the respondent's problem. When asked, she stated that she had opened the respondent's correspondence from time to time.

On cross-examination she stated that the respondent had told her previously that he had not secured the new lease. When asked, she said that she had been offered the alternative position on one or two occasions but was never informed what the job entailed. She explained, when asked, that the other shop was slightly different from the one she had been employed in. When asked she stated that she commenced employment with her new employer the following Tuesday after her dismissal from the respondent. When asked, she stated that she had attended two interviews for her new job while on annual leave.

When asked by the Tribunal she stated that she had not been given any choice in taking her leave in July 2006. When asked, she stated that she had not asked the respondent any details about the alternative position. When asked, she explained that she now the Manager of the shop, worked longer hours and therefore earned higher wages.

**Determination:**

The Tribunal are satisfied that the situation in relation to a transfer of undertakings did not take place. The Tribunal are also satisfied based on the evidence before it that the appellant was offered alternative employment with the respondent and failed to pursue it.

Accordingly the appeal under the Redundancy Payments Acts, 1967 to 2003 fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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