

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

CASE NO.

RP30/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr G. Mc Auliffe
Ms. E. Brezina

heard this appeal at Dublin on 2nd April 2008

Representation:

Appellant(s) : Mr. Tom O'Dwyer, Assistant Branch Organiser, Dublin Services Branch, SIPTU,
Liberty Hall, Dublin 1

Respondent(s) : In person

The decision of the Tribunal was as follows:-

At the outset it was agreed that the appellant's weekly gross wage was € 511.03 and not € 511.30, as stated on the T1A form.

Appellant's Case:

The appellant gave evidence. She stated that she had been informed by the respondent's second witness (known as K) in March 2007 that staff would be made redundant one by one and that she would be let go by the start of August 2007. It was explained that the reason for the redundancies was because of financial difficulties. The appellant told the Tribunal that she had been expecting this news.

The respondent's first witness (known as F) approached the appellant in July 2007 and asked her to remain working for the company until the end of August 2007 and he would pay her redundancy. The appellant stated that she did stay on and even refused to take up other employment.

On August 8th 2007 she informed F that she would be leaving on August 24th 2007 as she had acquired alternative employment. The appellant sent several emails to F to ascertain whether she

would be paid redundancy.

On cross-examination by F she stated that she had been offered redundancy if she stayed on working for the respondent. When asked, she stated that she commenced her new job on October 1st 2007. When asked why there was a delay in taking up her new position, she stated that she had taken the time to holiday at home in Poland.

When asked by the Tribunal she again stated that she had remained working for the respondent, as she had been promised a redundancy payment.

Respondent's Case:

F gave evidence on behalf of the respondent. He stated that he was one of the two Directors of the company. He explained that the appellant was employed as a drop shift co-ordinator. In March 2007 a meeting was held with the respondent's client who informed them that they could not guarantee on-going work but assured the witness that they would give the respondent three months notice if the work were to cease. From July 2007 there was one "rolling" month of notice. He explained that some staff did leave of their own accord after a meeting in March 2007.

The witness stated that he had spoken to the appellant in April 2007 about the work situation. He said that he told her that she would not be entitled to redundancy, as she did not have two years service. He asked her if she would like to remain working for the respondent in order to "clock up" her two years service then she "may" be entitled to redundancy. When asked he said that all employees were aware that work was guaranteed on a month-to-month basis. He stated that he had told the appellant that there was guaranteed work until September 2007.

The appellant gave notice on August 8th 2007 that she was to leave. The witness stated that he now had a problem as he had promised his client employees until September 2007. When asked, he stated that the claimant had stated, in an email, that she would go on leave in August for two weeks and would return for one day before leaving to commence new employment. The witness stated that this was of no benefit to the respondent, as some one would have to be trained in to cover the position.

On cross-examination he stated the number of staff working for the respondent was less than in 2005. When asked when he was made aware when the appellant was going on leave, he replied that it was around August 13th 2007.

K gave evidence on behalf of the respondent. She explained that she had not told the appellant that she would be made redundant from August 1st 2007. She explained that she was employed as a Supervisor and did not have the authority to tell employees such information.

When asked by the Tribunal, she said that staff would have discussed where they would be in the future over tea breaks.

Determination:

The Tribunal believe a redundancy situation existed. The respondent accepted that the appellant was warned that employment could not be guaranteed beyond September and there after employment would be guaranteed on a monthly basis only. The respondent also accepted that he had informed the appellant in March/April 2007 that she would not be entitled to statutory

redundancy until she had two years service on August 8th 2007.

The Tribunal believes the appellant when she says that she would have remained on in employment with the respondent had she not been informed her position was unsafe.

Accordingly, the Tribunal believes the appellant is entitled to statutory redundancy under the Redundancy Payments Acts, 1967 to 2003 and based on the following:

Date of Birth:	December 5 th 1980
Date of Commencement :	August 8 th 2005
Date of Termination:	August 24 th 2007
Gross Weekly Wage:	€ 511.03

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)