

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
RP163/2007

against the decision of The Minister for Enterprise Trade & Employment in the case of :

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. R. O'Flynn

Members: Mr. M. Forde
Mr. J. McDonnell

heard this appeal at Cork on 29th November 2007

Representation:

Appellant(s) : **XXXX**

Respondent(s) : **XXXX** Redundancy Payments Section,
Department of Enterprise, Trade and Employment,
Davitt House, 65A Adelaide Road, Dublin 2

The decision of the Tribunal was as follows:-

This Appeal came before the Tribunal by way of an employer appealing the decision of the Minister for Enterprise, Trade and Employment in relation to a rebate under the Redundancy Payments Acts, 1967 to 2003.

Appellant's Case:

The appellant outlined the circumstances of his appeal to the Tribunal. In 2004, an employee was working a three-day week. She was a valued member of staff and was part of a small office team. There was an increase in production at the respondent company and as a consequence, an increase in the workload in the office. It became apparent that the three-day week would no longer suffice for the increased needs of the business and the employee was offered a full time position. This did not suit the employee for personal reasons and the respondent made her redundant. They considered it impractical to employ someone for a two-day week and wanted one person for the job. The job was defined as a "credit role" within the office and involved directly dealing with customers and creditors. The respondent considered it impractical to have two people and an "undoubted crossover" and deemed it unsatisfactory for both the office and the customers.

The appellant referred the Tribunal to Section 4(i)(e) of the Redundancy Act, 1971, (amending Section 7 of the Principal Act, 1967) which states:

“the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal” should henceforward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained”

He submitted that the employee had been sufficiently knowledgeable in her duties, but as the business was changing and growing, this would no longer be true as the duties would change within the role. She was not willing to do the work that the new role required. The respondent submitted that this was the reason that the Minister for Enterprise, Trade and Employment should reverse his decision and grant the rebate on the redundancy paid to this employee. He accepted that should the employee have accepted the change in her work and worked the five day week, she would have been qualified to do so.

Respondent’s Case:

The representative of the Minister for Enterprise, Trade and Employment gave evidence. She told the Tribunal that the rebate had been refused due to the fact that the job clearly existed and had not ceased or diminished. Under the rules and regulations governing the Social Insurance Fund, as prescribed in the Redundancy Payments Acts, 1967 to 2003, when the job ceases, redundancy exists. The employee had been dismissed but the job still existed.

Determination:

Having heard the evidence on behalf of the appellant, the Tribunal is satisfied that the job previously held by the employee still exists and the Tribunal is also satisfied that the requirements for the job **have** in fact increased. Having regard to the foregoing and the evidence, the Tribunal determines that it does not constitute a redundancy situation within the meaning of the Redundancy Payments Acts, 1967 to 2003. Therefore, the appeal made by the appellant company against the decision of the Minister for Enterprise, Trade and Employment, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)