

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
RP97/2007

against
Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. M. Flood
Mr P. McAleer

heard this appeal at Monaghan on 21st April 2008

Representation:

Appellant(s) :

Ms Aoife Raferty, Gerry Jones & Co, Main St,
Carrickmacross, Co.Monaghan

Respondent(s) :

Mr. David Farrell, Ir/Hr Executive, IBEC, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

Claimants Case:

The claimant gave evidence that she worked in the kitchen/wash up area of the respondents company since October 1999. She worked 5 days per week starting at 9.30am and finishing at 2.30pm daily. In October 2005 she received a letter from her employer informing her of plans for re-development and renovations in the shop, restaurant and deli area which may involve employees being laid off for a short period while the building work was ongoing. The letter stated that building work was due to commence on the 17th October 2005 and would take approximately 12 months.

On the 5th April 2006 her employer informed her that she did not have any more work for her because the renovations had commenced. Her employer told her that she would contact her as soon as she had work available and the claimant finished work on that day. The claimant was contacted by her employer in August 2006 with an offer of employment on a 2 day week basis. This offer was declined by the claimant as she had secured alternative employment at this stage and the hours that

she had originally worked were not being made available to her.

Respondents Case:

The respondent gave evidence that all employees were notified by letters in October 2005 January 2006 and March 2006 of the proposed refurbishment plans. It was proposed that the claimants working days would be reduced from 5 days per week to 3 days per week and the claimant was notified of this. The claimant told her that her preference would be to work 2 days per week and she could sign on for the other 3 days. The respondent had no difficulty in acceding to this request. The respondent stated that while some employees chose to leave no employee was made redundant. The respondent denied telling the claimant to finish work on the 5th April 2006.

The respondent went on to give evidence of being approached by the claimant in July 2006 concerning a redundancy payment. She informed the claimant that she was not entitled to redundancy as a redundancy situation did not exist. The respondent became aware in July 2006 that the claimant was working in alternative employment and did not contact her again with an offer of a 5 day working week. She was of the opinion that the claimant had moved on and was now working in different employment and all entitlements had been paid to her.

Determination

The Tribunal considered the evidence adduced by the parties in this case and find that there is a conflict on the net issue of dismissal. The account given by the two witnesses were diametrically opposed. In order for there to be a redundancy there has to be a dismissal.

In the circumstances the Tribunal prefer the evidence of the claimant and on the balance of probabilities decide that the claimant was dismissed.

There is no doubt that a redundancy situation existed and that the hours worked by the claimant were no longer available to her. Therefore the position she held was redundant. In the circumstances the Tribunal determine that the claimant was made redundant and is entitled to a claim under the legislation. Her claim for redundancy is based on the following information:

Date of commencement of employment: 12/10/1999

Date of termination of employment: 05/04/2006

Gross Weekly Pay: €191.79

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

