

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP34/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr D. Hegarty
Ms H. Kelleher

heard this appeal at Cork on 16th July 2008

Representation:

Appellant :
In person

Respondent :
Financial Controller

The decision of the Tribunal was as follows:-

At the outset the respondent consented to amending the respondent name to XXXX

The appellant's time working for the respondent combined periods in the hotel, restaurant and bar.
The restaurant and bar operated under different trading names.

Respondent's case:

The financial controller told the Tribunal that company records show the appellant as having been in employment from around 1993/94. He could not remember her working in the hotel. She worked on a part-time basis, in or around six to ten hours per week. The last payslip on record was dated 11th June 2006. The premises was re-furbished over a two to three month period and re-opened in August 2006. There would be work available for the appellant if she chose to return. The appellant maintained she asked the proprietors son, who was not involved in the business, to contact her when the construction work was finished. Witness met the appellant on one occasion and she asked for her redundancy payment. He got the impression that she did not want to work.

In answer to questions from Tribunal members witness stated that when the premises closed for renovations it was common knowledge around the town/ locally that the staff were laid off on a temporary basis. There were very few employees as the business was running down. The assistant manager was aware that the premises was about to open however she had only been laid off for two to three weeks. There was no written communication in respect of the lay-off and if employees did not ask it was presumed they did not want to work. Their form of communication was through the rosters and employees either called in or rang to see if their name was on the roster. He did not think that the appellant was contacted to check her availability to work.

In cross-examination witness denied that he told the appellant she had to be interviewed by the new manager if she wanted a job in the re-furbished premises.

Appellant's case:

The appellant commenced her employment cooking in the respondent's hotel in 1993. She was paid £90 per week and worked on a full time basis. After ten months she was called to the office and offered a job washing-up in the adjoining restaurant on a full time basis. She was paid in or around £85 per week. She continued in this job until the restaurant closed down. At times she would be asked to work in the adjoining bar. When the restaurant closed down she was cleaning and washing-up in the bar, where they also served food. Her hours were 10am to 2pm at weekends, Saturday, Sunday and Monday and she was paid €130 per week into her bank account. She worked an average of ten to fifteen hours per week therefore her pay could vary depending on the number of hours worked. They then closed down the premises and she used to check on a regular basis to see if it was re-opening. She got the impression that the new manager did not want her coming back to work in the re-furbished premises which was trading under a different name. She was very upset when she was not called back. She was not a casual worker and her work was always of a

Determination:

The appellant did not receive any formal communication to tell her she had an opportunity of re-employment. The Tribunal is unanimous that her employment ended by reason of redundancy and she is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2003 based on the following:

Date of Birth	19 th April 1955
Date employment commenced	14 th June 1993
Date employment ended	11 th June 2006

Gross weekly pay

€112

Please note that this award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

