

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP229/2008

MN268/2008

WT141/2008

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. P. Casey
Mr. J. McDonnell

heard this appeal at Cork on 3rd September 2008

Representation:

Appellant: Edmond Smith, IWU, 55 North Main St, Cork

Respondent: The Managing Director

The decision of the Tribunal was as follows:

Respondent's case:

The owner/Managing Director (BD) gave evidence that XXXX gave them 3 months notice of terminating their contract on 1 August 2007, so they issued protective notice to all staff. The employees were told that there were other job options within the company. 14 new positions were made available, but they did not suit everyone. Only 2 members of staff didn't take up the new options, including the claimant.

He said that there was no way in which the claimant did not receive the protective notice. He said the claimant was offered twelve job options, with varying hours. He left it to each employee to choose the most suitable option for each of them. Many of the options which were offered to the claimant were similar, or even at the same hours as before with an increase in pay. All the jobs did not go at Tytex but the number of positions were reduced. The claimant was a valued staff member,

they didn't want her to go, but she said she was going. He couldn't understand how she could say that none of the offers suited her when many of them were at the same hours as before with an increase in pay. Six extra staff were taken on after the claimant left. He said another member of staff – PK- was doing the remainder of the claimant's job left after the reduction in work at XXXX. He didn't give the claimant notice to leave, as he didn't want her to leave.

Claimant's case:

The claimant gave evidence that she didn't receive any protective notice in writing. She got her holiday pay, but not until March 2008. She was offered two jobs in Dungarvan and Lismore that were unsuitable for her because she had to care for her special needs child, and none of them were at the same hours as before. She got a phone call from BD on 17/18 October 2007 saying that the job was being downsized so she would have to be let go, and was upset at this. She told BD that all the offers made to her were unsuitable. She said that PK was doing her job now from 5 to 8pm, whereas her job had been from 6 to 8. She was not given any pay in regard to minimum notice. She said she was only offered four job options not twelve. She said that she did receive her P45.

Determination:

The Tribunal accepts that suitable offers of employment were made to the claimant.

Accordingly her claim under Redundancy Payments Acts, 1967 to 2003, fails

Therefore, her claim under Minimum Notice and Terms of Employment Acts, 1973 to 2001, automatically falls.

In addition, as she was paid her entitlements in relation to holiday pay, her claim under the Organisation of Working Time Act, 1997, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

