

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
MN505/2008
WT236/2008
RP453/2008

Against

2 Employers

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 D. Hayes

Members: Ms J. Winters
Ms. K. Warnock

heard this appeal at Navan on 17th October 2008

Representation:

Appellant(s) :

Ms. Fiona Conroy, Information Officer, Citizens Information
Service, 1 Brews Hill, Navan, Co. Meath

Respondent(s) :

In Person

The decision of the Tribunal was as follows:-

The Respondent operated a franchise of the XXXX company. The Appellant commenced employment in January 2003 as office manager. The Respondent engaged in business from premises in Derry and Navan. Due to a reorganisation of the business, the managing director was going to be predominantly based in Navan and was seldom going to be in Derry. As a result he intended to take on most of the duties of the office manager. A decision was, therefore, taken to make the Claimant redundant. The Claimant was informed of this on the 1st November 2007 and was dismissed by reason of redundancy on that date. She was given no notice of her dismissal.

The Tribunal heard evidence that on the 25th October 2007, during a routine inspection, an employee of the Sliderobes company removed some of the Respondent's documents for further inspection at head office. He returned the following day and asked for the Respondent's cash book, which was given to him by the Appellant. On the 6th November 2007 the Respondent's two directors attended a meeting at Sliderobes head office in Belfast. The meeting was about perceived irregularities in the Respondent's documents. The managing director determined that the Appellant had acted improperly in giving the cash book and decided that rather than being dismissed for redundancy that she should be dismissed for gross misconduct. By letter dated the 15th November 2007 he informed the Claimant that she should no longer consider herself to be dismissed by reason of redundancy and should instead consider herself as having been dismissed by reason of gross misconduct and that such dismissal had taken effect on the 26th October 2007.

The Tribunal heard much evidence about the events of the 25th and 26th October and further events on the 6th and 13th November 2007. For reasons explained below, the Tribunal does not need to make any determination in relation to these matters.

The appellant was dismissed by reason of redundancy on the 1st November 2007. By the 15th November, when the subsequent letter of dismissal was written, she was no longer an employee of the Respondent. In essence, the Respondent dismissed the Claimant and subsequently made an attempt to change the reasons for the dismissal and to back date the second dismissal so that it would pre-date the actual dismissal. This is not a course that is open to an employer.

As the Tribunal is satisfied that the Appellant was dismissed on the 1st November 2007 by reason of redundancy, it does not need to make any findings in relation to the dismissal of the 15th November and the allegations of gross misconduct, other than that it was not an effective dismissal.

The Tribunal is further satisfied that a genuine redundancy situation existed.

In respect of the claim under the Redundancy Payments Acts, 1967 to 2003, the Tribunal is satisfied that the Claimant is entitled to a redundancy payment based on the following information:

Date of Commencement of Employment:	2nd January 2003
Date of Dismissal:	1 st November 2007
Date of Birth:	22 nd January 1967
Gross weekly pay:	€680.00

This award is made subject to the Appellant having been in insurable employment under the Social Welfare Acts during the relevant period and it should also be noted that a statutory gross weekly ceiling of €600.00 applies to payments from the Social Insurance Fund.

The Appellant received no notice of her dismissal. In respect of her claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 the Tribunal awards compensation of €1360.00 (being the equivalent of two weeks pay) to the Appellant.

It was accepted on the Respondent's behalf that the Appellant had not received one week's holiday pay. In respect of the claim pursuant to the Organisation of Working Time Act, 1997 the Tribunal awards compensation of €680.00 to the Appellant.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

