

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO:
RP16/2008
MN10/2008

against

Employer
under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal
(Division Of Tribunal)

Chairman: Mr. P. Quinn BL

Members: Mr. M. Forde
Dr. A. Clune

heard this appeal at Limerick, on 3rd September 2008

Representation:

Appellant: In Person

Respondent: XXXX

The determination of the Tribunal was as follows:

It was common case that the Appellant is a Lithuanian national whose employment with the Respondent commenced on the 20th July 2004 and ended on the 24th December 2007, by reason of redundancy, by which time she was in receipt of a gross weekly wage of €390 and to date has received from the Respondent, a redundancy payment in the amount of €2,761.20. It was also common case that the Respondent's business, at the place where the Appellant was employed, ceased on the 24th December 2007.

As the amount of such payment aforesaid does not equate to the statutory redundancy payment to which the Appellant is entitled, the Tribunal unanimously determines that the Appellant's appeal under the Redundancy Payments Act 1967 to 2003 succeeds, although the Respondent is entitled to a set-off, in respect of the monies aforesaid, as paid to date by way of a redundancy payment to the Appellant, however the award of this Tribunal determining the Appellant's entitlement to redundancy, is subject to her having been in insurable employment under the Social Welfare Acts during the relevant period. The appellant's date of birth as provided on her T1A form is the 31st October 1974.

It was also common case that, by letter dated the 17th December 2007, the Appellant was notified in writing by the Respondent, of its intention to cease doing business in

the place where the Appellant was employed, namely Roxboro Shopping Centre.

Although the Appellant's command of the English language is quite basic, she testified on oath that the situation which pertained as regards affording her notice entitlement was identical to that as pertained to her husband, Robert Sirokov, whose case has been the subject of determination by this Tribunal under reference number RP15/008-MN 9/2008

The Respondent in its direct evidence testified that in Autumn 2007, the Appellant was verbally notified by the Respondent, that business in the Roxboro Shopping Centre was to cease on the 24th December 2007 and that from Autumn 2007 onwards, a closing down sale was in operation at the premises, with the sale of stock on a "*two for the price of one*" basis and no new stock being purchased in the interim.

The Appellant's husband in the course of his cross-examination by the Respondent and on further questioning by the Tribunal, admitted that they had been verbally notified, some months prior to the 24th December 2007, that business of the Respondent in the Roxboro Shopping Centre was to cease on the 24th December 2007, but that they hadn't believed same, until they received the letter of the 17th December 2007 aforesaid from Mr. C, as in other years, there had been previous disposals of stock, on a similar basis. The Respondent accepted that whilst there may have been various promotional offers over the years, it denied that it had ever previously conducted a closing down sale.

In all of the circumstances, the Tribunal unanimously determines that the notice afforded to the Appellant in Autumn 2007, possessed such degree of certainty, as to date and time on which her employment would terminate and which in fact transpired, as to amount to an appropriate and lawful period of notice on the facts of this case.

In such circumstances, it is irrelevant whether the Appellant believed such would in fact transpire or not and in the absence of any further controverting evidence being adduced by the Appellant, as to the means by which she was entitled to receive notice of termination of his employment from the Respondent, the Tribunal unanimously determines that the claim of the Appellant pursuant to the Minimum Notice And Terms Of Employment Acts, 1973 to 2001, must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)