# EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**
Employee

**CASE NO.**
RP447/2008
MN495/2008
WT232/2008

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mahon B.L.

Members: Ms. J. Winters
Mr. J. Dorney

heard this appeal at Dublin on 17th September 2008

**Representation:**

Appellant(s): In person

Respondent(s): Ms. Kerry Molyneaux, IR/HR Executive, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

**Opening statement:**

The representative for the respondent told the Tribunal that the appellant had been out on sick leave since 2004 and continues to submit sick certificates to the respondent. In 2005, part of the respondent company re-located from Coolock to Blanchardstown and the appellant's colleagues in the Coolock factory also re-located to Blanchardstown. The employees who re-located to Blanchardstown were allowed a "cooling-off period" within which to decide if the move to Blanchardstown suited them or, in the alternative, if they wished to apply for redundancy. In a meeting with the appellant about six to seven months after the move, she was advised that when she was medically fit to return to work, her position would be considered.

**Appellant's case:**

Per the appellant's T1-A form (*Notice of Appeal*), which was received in the Tribunal on 03 June 2008, it was indicated that employment began in June 1999 and ended in October 2004 and in her sworn evidence to the Tribunal, the appellant confirmed same.

The appellant said that in 2004 or 2005, she received a redundancy form from the respondent, which she signed and returned. The respondent had transferred much of its business from Coolock to Blanchardstown in 2005 but she had not been advised about the move or the offer of redundancy. Her colleagues who had transferred to Blanchardstown had subsequently received redundancy payments. She had contacted her union representative some months after Christmas so as to follow-up on her redundancy claim and meetings had been arranged. However, she had been told that she was probably not entitled to redundancy because she was still an employee of the company. She felt that she had been discriminated against.

The appellant told the Tribunal that employment still exists at the Coolock factory but not the type of work which she had done. She also confirmed that she still remains medically unfit to return to work. She said that she had gone on sick leave about ten months before the re-location to Blanchardstown and was on sick leave when her colleagues had opted for redundancy. She agreed that she is still on the books of the respondent company as an employee but said that she thought that as she had signed the redundancy form and returned it to the respondent and that she was entitled to redundancy.

The appellant explained that she had only now brought her claim for redundancy to the Employment Appeals Tribunal because she had not known about it before and had only been told about it by friends.

In cross-examination, the appellant said that a number of employees had received redundancy forms and applied for same. She said that she had never been informed about the meetings that had gone on between the union and the respondent when negotiating about the redundancies. In her meeting with her union representative, she told him that she had signed the form to accept redundancy but had been told that she was not entitled to it. She accepted that she was still submitting medical certificates to the respondent and was still on their books as an employee. She said that she was now claiming redundancy because she felt that she was being discriminated against.

The appellant confirmed her memory of a conversation where she was told that she would be offered employment in the factory in Coolock upon being medically fit and returning to work, and if such employment was not available, redundancy would be offered to her.

**Respondent's case:**

In his sworn evidence, DH (*on behalf of the respondent*) explained that in 2005, one of their plants in Coolock was vacated and operations were moved to Blanchardstown. An A4 page invite was issued to the employees with their payslips to go and see the new factory in February / March 2005 but because the claimant was on sick leave, she did not receive such an invitation. In May 2005, the respondent met with the union to discuss compensation relating to the transfer. Despite a number of meetings during that summer, no agreement was reached so the matter was referred to the Labour Relations Commission in September 2005. The first agreement that was proposed by the Labour Relations Commission was rejected but a subsequent agreement was

accepted in a ballotof the workers in October 2005. A copy of this agreement was opened to the Tribunal. The mainpoints of this agreement included…

- Ø the respondent was making no one redundant as all jobs were being kept and transferred to Blanchardstown
- Ø workers who transferred to Blanchardstown would receive €2000.00 disturbance money in two stages
- Ø if the transfer did not suit, the disturbance money had to be returned and the workers could apply to be made redundant.

DH confirmed that the claimant did not receive an invitation to see the new factory, which in hindsight was a mistake. Approximately 220 employees worked for the respondent at the time and, before going on sick leave, the claimant had worked on the evening shift as a general operative in the sausage manufacturing room of the Coolock plant. Most of her colleagues moved to the new plant in October 2005 and those who chose to do so had applied to be made redundant and left by mid December 2005.

DH said that after Christmas 2005, he received a formal letter from the claimant's union representative seeking a formal meeting on her behalf when he made an application for redundancy. In June 2006, the respondent met with the claimant and her union representative when they put their case for redundancy. They were told that when medically fit to return to work, the claimant would be offered employment at the plant in Coolock and if this was unsuitable, at the plant in Blanchardstown and if this did not suit the claimant, she could then apply to be made redundant.

In examination from the Tribunal, DH confirmed that the claimant was on the payroll of the respondent but had not been receiving payslips in October 2005 because she had been on sick leave. He also confirmed that she had not been notified of the transfer of jobs to Blanchardstown but she should have been. He said that redundancy had only been offered to employees who had applied for it and who had not wanted to move to Blanchardstown and whose jobs no longer existed in Coolock. The claimant's job in the sausage manufacturing department had transferred to Blanchardstown.

DH said that the employees who had opted for redundancy had applied for same through their supervisor. As no one was being made redundant, redundancy certificates had not been issued to employees. DH denied that the respondent had ever received a signed redundancy form from the claimant. Anyone who wished to be made redundant signed an A4 page, which was in the possession of their supervisors.

DH confirmed that though the claimant had been a member of staff at the time of the transfer, she had not been informed directly about the change. However, he said that he had a number of telephone conversations with the claimant during 2006. She had told him that she was dissatisfied, due to the fact that she did not get redundancy. He said that he told her that when she was medically fit to return to work, her position would be considered.

**Closing statements:**

The respondent's representative referred to Section 7(1) of the Redundancy Payments Act, 1967 and said that the respondent's position was that at this point and time, the claimant was not entitled to redundancy because she continues to be an employee of the company and was not dismissed. General operative positions continue to exist in Coolock and employment on evening shifts exist in Blanchardstown and if same proves unsuitable, redundancy can be sought. If the claimant returns

medically fit to work, she can then apply for redundancy but, at this time, the respondent cannot accede to her claim for redundancy because of the precedent it would set for other employees in a similar situation. In addition, if the Tribunal finds that the claimant was dismissed and such dismissal occurred in 2005 and the Tribunal received the claim for redundancy in 2008 that claim falls outside the statutory 104 weeks within which to make such a claim to the Tribunal.

The claimant said that even if she became medically fit to return to work, her job in Coolock no longer exists and she could not go to the new plant in Blanchardstown for personal reasons and it is too far a journey for her to travel.

**Determination:**

The members of the Tribunal very carefully considered all of the evidence adduced, documents submitted and statements made during the hearing. The Tribunal noted, with concern, the serious lack of attention to the important matter of staff communications, particularly in this instance in respect of a member of staff absent on legitimate sick leave.

The Tribunal heard that the claimant and her trade union representative met with management in June 2005 when it was agreed that her job was still available and that as soon as she is certified fit to return to work, options including re-location, suitable alternative employment and possible redundancy would be discussed. Accordingly, it would be inappropriate to interfere with a mutually agreed arrangement such as this.

Having regard to all of the circumstances, the Tribunal finds that the claimant was not dismissed and her job did not become redundant in 2005. Therefore the appeals under the Redundancy Payments Acts, 1967 to 2003, the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation of Working Time Act, 1997, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)