

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE *-Appellant*

CASE NO.  
RP612/2009

against  
EMPLOYER *-Respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. T. Gill  
Mr. T. Kennelly

heard this appeal at Nenagh on 22nd September 2009

#### **Representation:**

Appellant: Mr Brendan F. Hyland, B. Hyland & Co, Solicitors, Luttrell  
House, Castle Street, Roscrea, Co Tipperary

Respondent: Mr. Paul Dunne, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

#### **The decision of the Tribunal was as follows:**

The appellant worked as a permanent part-time merchandiser with the respondent since 1993. In latter years she worked worked five hours per week at an hourly rate of €8.65 and was responsible for merchandising a particular brand of products.

The General Manager gave evidence that in late 2008 one of the respondent's clients decided to discontinue third party merchandising. The respondent was notified in early December 2008 that the contract was finishing on the 6<sup>th</sup> January 2009. As a result the General Manager had to contact eighty-four members of staff and most of the letters were sent in a generic format. The affected staff were informed of the situation by letter dated the 4<sup>th</sup> December 2008. The letter stated that the respondent was currently examining what alternatives, if any, may be available and that contact would be made if any such opportunities arose. However, it was unlikely that an alternative would be found for all of the employees. The appellant confirmed in evidence that she received the letter of the 4<sup>th</sup> December 2008.

The director of the company gave evidence that he spoke to the appellant on two occasions. He first spoke to the appellant after the initial letters regarding the situation were sent to the employees. He explained to her that the respondent was attempting to re-locate the employees to other work.

The appellant told him that she did not want other work.

There was a conflict between the appellant and the director's account of the conversation of the 18<sup>th</sup> December 2008. The appellant's evidence was that she contacted the director to discuss the matter. The director informed her that the company was examining if any other work was available and mentioned another supermarket, which had opened a new store. It was the appellant's evidence that no offer of alternative work was made to her on this date.

The director stated in his evidence that he telephoned the appellant on the 18<sup>th</sup> December 2008 to make her an offer of alternative work. The alternatives offered to the appellant consisted of an offer of nine hours work for one client or six hours work for another client at the same rate of pay. The appellant told him she did not want to work in the supermarket and that she wanted to receive redundancy. The director confirmed that he did not write to the appellant on or after the 18<sup>th</sup> December 2008 outlining the offer of work he had made to her. Approximately twenty-eight staff were made redundant with only four employees being re-located to alternative work. The director subsequently informed the General Manager of the appellant's refusal to accept the offer of alternative work. The General Manager was surprised by the appellant's refusal, as there were so few offers of alternative work available.

The next letter the appellant received was dated the 6<sup>th</sup> January 2009. This letter stated that due to the economic climate alternative work was in short supply. The General Manager stated in the letter that he would maintain contact with the staff in writing to update them on matters and, where appropriate make contact by telephone or text. As and from the 6<sup>th</sup> January 2009 the appellant did not complete any further merchandising hours for the product.

The appellant received a further letter dated the 16<sup>th</sup> January 2009 which stated that with few exceptions the hours worked could not be replaced. The General Manager stated in the letter that the respondent had begun the process of assessing everyone's status regarding redundancy and that the respondent would contact people on an individual basis as soon as possible. The appellant gave evidence that she believed this letter meant that her work was definitely finished and that no alternative merchandising roles were available.

The General Manager gave evidence that the letters of the 6<sup>th</sup> and 16<sup>th</sup> January 2009 did not refer to the offer and refusal of alternative work, as these letters were generic. On the 2<sup>nd</sup> February 2009 he and the director narrowed down those to whom alternatives could be offered and a letter was sent outlining this to the appellant and that she had previously refused the offer of alternative work. The respondent accepted the appellant's decision not to accept the alternative work and the appellant continued on the respondent's accounts as an employee.

The appellant received a further letter dated the 2<sup>nd</sup> February 2009 from the General Manager. The letter stated that as her hours of employment were reduced to nil the appellant was made redundant as a result of this decision. The letter further stated that the appellant was offered suitable alternative employment for a total of seventeen hours per week but that the appellant had refused this offer. As a result of this refusal the appellant was not entitled to any redundancy payment. The appellant stated in evidence that she was surprised when she received this letter, as it was the first she had heard of any offer of work from the respondent. The appellant spoke to the director about the letter and told him that the letter surprised her. The director told her she had been offered work on the 18<sup>th</sup> December 2008 but had refused it. The appellant told him that she had letters informing her that her work was made redundant.

The General Manager spoke to the appellant on the 5<sup>th</sup> February 2009 and confirmed the position to

her by a letter of the same date. The appellant noted in her evidence that this letter stated an offer of fourteen hours per week was made to her but a previous letter had said seventeen hours. The letter of the 5<sup>th</sup> February 2009 stated the appellant had refused the offer of work, which resulted in her position becoming redundant on the 6<sup>th</sup> February 2009. The letter stated that the offer of work was still available to the appellant.

In her evidence the appellant stated that no offer of alternative work was given to her on the 18<sup>th</sup> December 2008 and there was no mention of an offer of alternative work in the respondent's letters of the 6<sup>th</sup> and 16<sup>th</sup> January 2009. By the time the appellant received the letter of the 5<sup>th</sup> February 2009 she was not in a position to take up the offer of alternative work outlined in the letter as she had commitments as a childminder. The appellant contended her date of termination was the 6<sup>th</sup> January 2009 and she was paid up to this date. A P45 did not issue to the appellant. The appellant stated this was to allow her to undertake promotional work if it arose.

**Determination:**

There was a clear conflict of evidence between the parties in relation to whether an offer of alternative work was made to the appellant. The Tribunal carefully considered both the verbal and documentary evidence adduced at the hearing. It was the evidence of the respondent's witnesses that an offer of alternative work was made to the appellant on the 18<sup>th</sup> December 2008. It is the Tribunal's view that if an offer of alternative work existed the offer should have been confirmed in writing to the appellant. In these circumstances the Tribunal finds that the appellant is entitled to a redundancy payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

|                       |                                |
|-----------------------|--------------------------------|
| Date of Birth:        | 8 <sup>th</sup> September 1945 |
| Date of Commencement: | 1 <sup>st</sup> February 1993  |
| Date of Termination:  | 6 <sup>th</sup> January 2009   |
| Gross Weekly Pay:     | €43.25                         |

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)