

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
RP423/2007

Against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Fahy

Members: Mr P. Pierson
Mr P. Clarke

heard this appeal at Carrick-On-Shannon on 23rd May 2008

Representation:

Appellant : Kevin P Kilrane & Co, Solicitors, Tulcon, Mohill, Co Leitrim

Respondent : Rochford, Gallagher & Co, Solicitors, John Street, Sligo

The decision of the Tribunal was as follows:

The appellant commenced employment with the respondent in 1994. She worked in a seasonal capacity for the first two years but for the remainder of her employment there, the witness was employed and worked in a permanent fulltime role. Her primary duties involved general administrative work. In February 2006 the respondent took over the business and a transfer of undertaking was applied. The claimant produced a letter dated January 2007 from her former employer, McDonogh Milling & Trading Company Limited, stating she was a permanent employee with them up to February 2006 when that company was sold to the respondent. At no stage either prior or post those proceeding was the appellant issued with a contract of employment.

While the witness was departing overseas on a holiday on 20 April 2006 a meeting was taking place on the respondent's premises in relation the future of work there. She was aware of that meeting through her trade union representative and the production manger. When she returned to work at the end of that month that manager was unable to give her details of the situation at the workplace. She continued working there mostly moving furniture and fittings until 11 May 2007 when that employment ceased. At her own request she was issued with a RP9 redundancy form by the company stating that she was on temporary lay-off from 11 May. The witness did not act on that form nor did she personally seek redundancy from the respondent. However, she was aware that her trade union was pursing such a payment on her behalf.

When she sought her P45 from the respondent the witness was in turn asked to submit a letter of resignation. However, she felt that she did not terminate her own employment. By autumn 2007 when she was contacted by the company to return to work the appellant had secured fulltime work elsewhere and therefore declined that offer.

Respondent's Case

The general manager of the animal feeds division decided that production staff at the Dromad, county Leitrim plant was to be laid off for the summer of 2007 with the intention of recommencing work the following September/October. Both the witness and the production manager in that plant prepared for a meeting with the relevant staff on 20 April 2007. The general manager was certain he informed the assembled staff at that meeting that the intention of the respondent was to recommence production the following October subject to business demands. The company generally conducted its communication with staff in writing and "doesn't do letters" with staff. According to the witness a different code was used in this industry.

The witness seemed unaware that the claimant was on holidays at that time and did not therefore directly speak to her on that occasion to inform her of this lay-off development. The production manager was to determine the details of this lay-off and inform the relevant employees on that development. The witness was not familiar with the claimant's background with the respondent and its predecessor. However, while it was possible, it certainly was not normal or usual that the claimant worked on a fulltime basis with the respondent for the previous years.

The production manager said it was normal procedure to lay-off staff at the Dromad plant for the summer months and accepted it was his responsibility to implement those lay-offs. He spoke to the claimant about this situation in late April 2007 when she returned from her leave. The claimant "would have been aware of the gist of that meeting". The witness was unable to tell the claimant when and if the plant would re-open but did indicate that it was the respondent's intention to re-commence work there. Since the respondent regarded the claimant as a core employee the witness contacted her by phone on 11 September 2007 to report that the plant would be soon back in operation and her presence was required. At that stage the witness was not aware of the claimant's redundancy application.

The human resources manager was aware of the meeting between other management and some staff that took place 20 April 2006. He met the appropriate trade unions officials on 1 May where concerns were expressed about the situation for the plant and its workforce. The witness stated that the trade union was acting on behalf of its members including the claimant. In that context he replied to the union's letter of 6 July. That letter asked that the laid-off employees now wished to be made redundant. In a reply, dated 11 July the witness rejected that application stating that it was still the intention of the company to re-commence production in October 2007. He had already told the officials of this intention at the meeting of 1 May. An expected RP9 redundancy form was never received by the respondent from the claimant.

Determination

Having heard the evidence from the parties the Tribunal finds that a real and genuine redundancy situation had arisen in this case. The claimant had worked as a fulltime employee with the predecessor company for several years prior to her transfer to the respondent and she had an expectation that she would continue to enjoy the same working conditions with the respondent. However, the respondent changed her status as a fulltime employee with a

consequential reduction in her earnings, and a fundamental change in her status.

Efforts by the respondent to find suitable alternative employment with in the company failed and the claimant notified the respondent through her trade union representative on 6 July 2007 that she wanted to claim her redundancy payments. The Tribunal is satisfied that she was entitled to that redundancy and accordingly allows her appeal under the Redundancy Payments Acts, 1967 to 2003 based on the following:

Date of Birth: 15 May 1975
Date of commencement: 01 September 1994
Date of Termination: 11 May 2007
Gross Weekly Wage: €403.71

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)

