

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
RP741/2008

against
Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Hayes B.L.

Members: Mr. T. O'Sullivan
Mr. G. Whyte

heard this appeal at Dublin on 28th November 2008

Representation:

Appellant: Mr. Francis McGagh B.L. instructed by Mr. Brendan Byrne, Liam Moran &
Company, Solicitors, 11 Malahide Road, Swords, Co. Dublin

Respondent: In person

The decision of the Tribunal was as follows:

At the outset of the hearing the Tribunal heard that dismissal as a fact was in dispute between the parties.

Appellant's Case:

The appellant commenced employment with the respondent in July 2003, packaging products in a factory. In April 2004 the owner and location of the business changed but the appellant's work remained the same.

In mid April 2008 the appellant was told there was no work available for her at that time but the respondent told her he would be in contact when work became available. The appellant waited six weeks but did not hear from her employer. Sometime later, possibly in June 2008, her employer telephoned her and offered her two weeks work. When the appellant had completed the two weeks work, her employer again told her he did not have more work for her. The appellant did not receive any further work from the respondent.

The appellant contacted her union who communicated with the respondent on the appellant's

behalf. Nine weeks after the appellant had contacted the union the respondent offered her a return to work. However, the appellant had already started another job and she was not prepared to return to work with the respondent after being treated unfairly by him.

In cross-examination it was put to the appellant that on the 20th April 2008 the gluing section, which was where the appellant worked, were asked to take a week's holidays at their own expense. The appellant did not recall being asked to take a week as holidays. The appellant denied that the respondent telephoned her on the 23rd April 2008 to tell her there was work coming in. It was put to the appellant that this telephone conversation had occurred and that she had asked for an increase to €12 per hour.

It was put to the appellant that she had telephoned the respondent on the 9th June 2008 seeking work for herself and another individual and that she was due back to work on the 16th June 2008 but failed to attend. The appellant replied that she worked for the respondent for two weeks at the end of May. She was not asked to attend work on the 16th June 2008.

In reply to questions from the Tribunal, the appellant confirmed that throughout her employment she was laid off every year for a number of weeks.

Respondent's Case:

By the 18th April 2008 the respondent's workload was quiet for two months. As a result the respondent requested that the six employees working in the gluing section of the factory would take a week at their own expense or take a week's holidays. All of the six employees agreed to take a week at their own expense.

Subsequently, the respondent telephoned them a week later and offered them work. Three of the employees (including the appellant) requested an increase to €12 per hour if they were to return to work. The respondent informed them he could not afford to pay above the minimum wage of €8.65 per hour.

The respondent did not hear anything further from these three employees until week commencing the 9th June 2008 when the appellant contacted him seeking work for her and the other two individuals. The respondent offered the appellant and her colleague two weeks' work. The appellant attended for work for two days on the 12th and 13th June 2008. When she received her payslip for the respondent on the 13th June 2008 the appellant queried why she was not receiving €12 per hour. The respondent again told her that he could not afford to pay that rate. The appellant left when she finished her shift at 4pm and the respondent had no further contact from her until she received a letter from her union in August 2008.

In cross-examination the respondent stated that when the appellant failed to show for work on the 16th June 2008 he attempted to contact her by telephone but was unsuccessful.

When the union contacted the respondent it was to inform him that three of his employees (including the appellant) were seeking redundancy payments. The respondent now performs most of the manual work himself. The respondent no longer has work available in the gluing section for six employees. At the start of 2008 the respondent had ten employees, he now has six employees. Two employees that worked in the machinery section now perform the work that the appellant and her colleague carried out.

It was put to the respondent that two of the appellant's colleagues had signed RP50 forms for the respondent but the appellant did not sign the document, as she did not understand it. The respondent accepted that he had deemed the appellant's position redundant when he requested that she sign an RP50 form. The respondent now knows that he should not have offered redundancy to the three employees by virtue of the fact that he had offered their positions back to them. The other two employees were paid a full redundancy entitlement from the Department of Enterprise, Trade and Employment and it is the respondent's intention to fully re-pay the Department these monies.

Determination:

The Tribunal is satisfied that the respondent asked the appellant and five other employees to take either a week's unpaid leave or a week's holidays and that all six employees agreed to take a week's unpaid leave. On the Thursday of the week of the unpaid leave the respondent telephoned the six employees and told them that there would be work again the following Monday. The appellant and two other employees sought to be paid €12 per hour. The respondent told them that it could only afford to pay them the minimum wage, which they had been on. Those three employees did not return to work the following Monday.

Approximately six weeks later, the appellant telephoned the respondent looking for work for her and her two friends. She was told that there was work available. She and one friend came to work the following Thursday. On the Friday, when they were given their payslips, they queried why they had not received €12 per hour. It was again explained that the respondent could not afford to pay them that rate. The appellant left at the end of the day and did not return to the respondent's employment. An attempt was made to telephone her the following Monday but there was no answer.

The appellant sought a redundancy payment and the respondent was initially willing to make such a payment. RP50 forms were drawn up for the appellant and her two colleagues. The two colleagues signed their forms and received their payments. Rebates were claimed by the respondent from the Department of Enterprise, Trade and Employment in respect of these payments. The appellant had declined to sign until she had received advice. In the interim, the respondent was advised by its accountant that the payments should not have been made because the three employees had left of their own volition. Accordingly the respondent refused to make a payment to the appellant.

The Tribunal is not satisfied that the appellant has made out a case that she is entitled to a redundancy payment. In light of the facts accepted by the Tribunal, as set out above, the Tribunal is satisfied that the appellant left the respondent's employment. As she left the respondent's employment voluntarily and was not dismissed by reason of redundancy, the appellant is not entitled to a redundancy payment.

The Tribunal notes that the respondent accepts that it ought not to have been paid the rebates from the Department of Enterprise, Trade and Employment and further notes that it was said under oath in evidence that these rebates would be repaid to the Department.

On the basis of the foregoing, this claim pursuant to the Redundancy Payments Acts, 1967 to 2003

fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)