

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:		CASE NOS.
Employee	– <i>Appellant</i>	RP779/2008
And		
Employee	- <i>Appellant</i>	RP776/2008
Against		
2 Employers	– <i>Respondent</i>	

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. C. McHugh
Mr. C. Ryan

heard this appeal at Dublin on 8th December 2008

Representation:

Appellants: Ms. Chris Rowland, SIPTU, Liberty Hall, Dublin 1

Respondents: First respondent in person

Second respondent Ms. Cathy Smyth BL instructed by Lorraine Williams of
Chief State Solicitor's Office, Osmond House, Little Ship Street, Dublin 1.

The decision of the Tribunal was as follows:-

The Tribunal discharged the first named respondent.

Appellants Cases

The first appellant gave evidence. She worked for the respondents' from July 1997 to August 2007 as a housekeeper. On 1 November 2004 she reached retirement age and received her lump sum payment and state pension. She entered into a contract of temporary whole-time employment with her employer, effective from 1 November 2004. She continued in employment until made redundant on 31 August 2007. She received a redundancy payment in respect of her temporary whole-time service, from November 2004 to August 2007.

Her claim before the Tribunal is for a redundancy payment in respect of her service from July 1997 to November 2004.

The second appellant gave evidence. She was employed from October 1986 to November 2007. She was paid her pension lump sum from the pension scheme in March 2007 when she reached the age of 65. She was not paid a pension as she continued working in the same position. In January 2007 she accepted a temporary contract of employment from March to August 2007. She continued to work as usual until August 07, after that she was archiving and doing research. Her employment terminated in November 2007. She was made redundant.

Respondent's Case

The respondent argued that the first appellant's contract of employment was terminated when she reached retirement age. A new contract of employment would not have been entered into unless something had changed. Her old contract of employment was terminated by her employer when she reached the age of 66, in accordance with Section 9 (1) a of the Redundancy Payments Act, 1967.

The second appellant retired, it was asserted, in March 2007. Her contract of employment did not specify a retirement age. However under the pension scheme she was entitled to a retirement pension at age 65. Custom and practice was that employees retired at 65. She was re-employed on a temporary contract in March 2007. She was made redundant in November 2007. Her period of employment from March to November 2007 did not qualify her for redundancy payment. When deciding on the normal age of retirement for an employee the decision in the UK of Denning in the case of *Howard v Department for National Savings* is relevant.

Determination

The Tribunal carefully considered the evidence adduced. The Tribunal is satisfied that the first appellant retired on 1 November 2004. This event terminated her employment. She was subsequently employed under a new contract of employment. She was paid redundancy when her second employment was terminated by reason of redundancy. The Tribunal finds that the first appellant is not entitled to a redundancy payment in respect of her employment prior to 1 November 2004. Her claim under the Redundancy Payments Acts, 1967 to 2003 fails.

The second appellant, the Tribunal finds, retired in March 2007. Subsequently she was employed under a temporary contract in the knowledge that the organisation was being wound up and that her employment would terminate then. The Tribunal finds that the second appellant retired from her employment in March 2007. Her retirement terminated her employment. Therefore the second appellant is not entitled to a redundancy payment. Her claim under the Redundancy Payments Acts, 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)