

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee

- claimant

UD5/2008
RP10/2008

against

2 Employers

-respondent

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms R. O'Flynn B.L

Members: Mr D. Hegarty
Ms H. Kelleher

heard this claim at Cork on 6th October 2008
and 17th December 2008
and 23rd April 2009

Representation:

Claimant :

Ms Elizabeth Scally B.L.,instructed by Ms Sharlene Minehane, Fiona Foley & Co,
Solicitors, Joyce House, Barracks Square, Ballincollig, Co Cork

Counsel for the claimant was not present at the hearing on 23rd April 2009. Ms. Caroline
O'Driscoll, Solicitor for the Claimant, was present.

Respondent :

Mr Dermot Sheehan B.L., instructed by Ms Brid O'Flynn, Colm Burke & Co.
Solicitors, Washington House, 33 Washington Street, Cork

Solicitor and Counsel for the Respondent were not present at the hearing on 23rd April
2009. XXXX attended on behalf of the Respondent.

At the outset, Counsel for the Claimant withdrew the claim under the Unfair Dismissals Acts, 1977 to 2007.

Respondent's case:

The respondent company, which was based in Ballincollig, Co. Cork ceased trading in or about August 2007. During this time in 2007, the claimant was on maternity leave. A P45 in respect of the claimant issued when the company ceased trading. The respondent offered to re-engage the claimant in Kinsale Co. Cork, upon her return from maternity leave. The claimant declined to move to work in Kinsale, as the distance to travel to Kinsale was approximately twenty-six miles, each way.

Claimant's case:

The claimant's employment was based in Ballincollig, Co. Cork. In August 2007 while she was on maternity leave she was notified that the construction side of the business was wound up and she was offered employment in Kinsale, which was twenty-six miles from her home. In March /April 2007 flexitime was discussed by the claimant and the respondent. However, with the proposed move to Kinsale flexitime was not now on offer.

From the claimant's perspective the offer of employment in Kinsale was not suitable in respect of distance she would be required to travel to work and the lack of flexitime.

Determination:

The Tribunal is satisfied, having heard the evidence adduced, that the respondent intended the P45, which issued in respect of the claimant whilst she was on maternity leave, as an administrative action, and not as effecting termination of the claimant's employment. Notwithstanding, a purported termination during maternity leave is void, in accordance with section 23 of the Maternity Protection Act 1994.

Having heard the evidence, the Tribunal is satisfied that the employer intended to cease carrying on business in the place where the claimant was employed, namely Ballincollig. Further, the Tribunal is satisfied that the claimant could not reasonably be expected to work in Kinsale, having regard to the distance and extra travel, some fifty-six miles in total, per day.

Accordingly, the Tribunal is satisfied that the claimant's employment ended by reason of redundancy, in accordance with section 2(b) of the Redundancy Payments Act 1967, as amended, by section 4(i)(b) of the Redundancy Payments Act 1971.

Accordingly, the Claimant is entitled to a redundancy lump sum under the Redundancy Payments Acts 1967 to 2007, based on the following criteria:

Date of Birth	05 th February 1976
Date employment commenced	11 th March 2002
Date employment ended	22 nd November 2007
Gross weekly salary	€769.23

Please note that a statutory weekly ceiling of €600 applies to all payments from the Social Insurance Fund

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

Further, the Tribunal notes that Counsel for the claimant withdrew the claim under the Unfair Dismissals Acts, 1977 to 2007, at the outset of the hearing. Accordingly, the Tribunal makes no determination in respect of the aforesaid statute.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

