

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

,

RP1157/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr B. Garvey BL

Members: Mr F. Cunneen
Mr. P. Woods

heard this appeal at Dublin on 1st April 2009

Representation:

Appellant :

In person

Respondent :

XXXX

The decision of the Tribunal was as follows:-

Appellant's case:

The appellant sent her application for a post as architect with the respondent, by email at the beginning of 2005. She received a response, was invited for interview and commenced her employment on 7th March 2005. At the interview the respondent had a Polish interpreter present who facilitated the process. She did any work she was asked to do and after two years, in or around April 2007 she asked for an increase in pay. Her salary was increased from €27,500 to €32,500 per annum. In October 2007 the Managing Director (MD) told her he had bad news that his company was changing its profile, they did not need her and he would give her six weeks notice, which was longer than required of him. She did not receive any notice in writing but started looking for another job and secured alternative employment after six weeks. During the six weeks she took some holidays that were outstanding. She started her new job on 3rd December 2007 on a salary that was in or around the same as what she was earning with the respondent.

In cross-examination witness said she did not remember a conversation with MD in September

2007, where he stated there was not a future for her in the firm for several reasons, where the claimant got upset and he said he would keep her in her post until she secured alternative employment.

In answer to questions from Tribunal members witness stated that she was not told by the respondent if there were problems with her work. In relation to changing the profile of the respondent she understood this to mean that they were now going to focus on overseas customers. The respondent had started a new market in Morocco and she understood the respondent did not need her any longer.

Respondent's case:

The Managing Director (MD) did not recall the appellant sending in her CV by email but she may have done so. She called to their office in Dun Laoghaire and he remembered admiring her pluck for coming to the door. A Polish architect worked with him at the time and she sat in on the interview. He explained at the interview that her poor English would be a handicap and she would need to improve. Her salary was to be €14 per hour and there would be a review after a number of months. Initially she worked as an architect's assistant. In 2006 her salary was reviewed and increased to €32,500. In May 2006 it was explained to her that witness and another director were her supervisors. She was told she had to work harder at her English but this was not done formally. The other director had a word with her from time to time.

At her annual review in July/August 2007 it was felt that the appellant had shown no marked improvement in her English or architectural skills. The respondent felt that maybe a small office may not be the right environment for her. On 13th or 14th September 2007 he asked the appellant to come to a meeting and he told her that he did not see a future for her and that she would do better in a larger firm where she would develop flexible skills. At that time the respondent had three Polish architects therefore her nationality was not an issue. The appellant got upset and said her husband was not working and she had no other income. In the respondent's small practice they try to be supportive and witness told her he would not put her on the street but would pay her to the end of October in addition to any outstanding holidays. He told her he would keep her job open until she got alternative employment but if she had not secured other work by Christmas he would review the situation. He also told her she could take time off for interviews to help in her search for new employment. They invented work for her from that time to the end of November. About ten days before the end of November the appellant came to him and said she had got other work and she moved to the new job around the end of November.

In answer to questions from Tribunal members witness stated that the respondent had picked up a large job in Morocco but they were doing the work in Ireland. The other Polish architect was kept on and they had a Moroccan architect in Morocco but the design was done in their office in Dublin. In May 2006 the appellant was put on a formal contract.

Witness also stated that another young architect was also let go as he was not satisfactory. When the appellant left her post was not filled. Others were taken on after the young architect was let go. They would have 12 – 15 at any one time and this number could fluctuate. They were not letting people go between September and November 2007.

Determination:

The respondent advised the appellant on a number of occasions that both her architectural and English skills needed to improve. In September 2007 he advised her that neither her English or architectural skills had made sufficient progress to contribute to the firm and she might have better prospects in a larger firm. In light of her husband being unemployed he said he would not enforce compulsory notice of dismissal but would allow her to look for work and would review in December. She obtained alternative employment in November 2007.

In all the circumstances the Tribunal is unanimous that the appellant was not made redundant and the claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

