

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE - *appellant*

CASE NO.
RP2036/2009
MN1724/2009
WT751/2009

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr E. Handley
Mr N. Dowling

heard this appeal at Dublin on 9th June 2010

Representation:

Appellant: In person

Respondent: Ms. Joanna Howells-Roder, Jhr Solutions, 28 Eithne Street, Dublin 7

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant gave direct sworn evidence; she is employed with the respondent on a part-time casual basis as an interviewer for about five years. Her work is assigned to her month to month so there are no normal working hours.

In January 2009 work had started to slow up. Also at this time she had an issue with the field manager (hereinafter referred to K), K had telephoned her and informed her that if her pay claims were not in the base office in five minutes they would not be put through the payroll that month. The appellant was on the other side of the city at the time she received this telephone call. She explained that she was paid on a monthly basis, her pay claims had to be submitted by a date each

month set by the company to enable her to receive payment the following month. She was paid by assignment plus expenses and mileage. She also recalled another incident where K had telephoned her to say her mileage claim was too high. The appellant complained to the CEO in relation to this and he referred her to HR. She did not put this complaint in writing.

She recalled in the summer of 2008 she could have worked seven days a week. However in February 2009 there was no work available to her, the number of her assignments had deteriorated rapidly. She did not know if this was a result of the downturn in the economy or because of her previous run ins with K. As she did not interact with the other interviewers in the company she was not aware of their situation at this time. On the 1st May 2009 she served a RP9 on the respondent and requested that they make her redundant so she could claim her income continuance plan. After this the work assigned to her increased but then later she had to go back on the dole. Then the appellant served an RP 77 on the respondent on the 11th August 2009. She had previously asked the HR manager for full-time work but the HR manager had told her that she was just a part-time worker.

She did not sign or receive any terms and conditions for four and half years while working with the respondent.

Under cross-examination she was referred to her terms of conditions of employment specifically to "Status of Employment" "Due to the nature of market research, you are employed on a part-time casual basis. There is no guarantee of work, and you can refuse any assignment without justification." The appellant responded by saying she had never refused work and in the past there had always been plenty of work available to her. The appellant accepted that she was always aware of the "cut off date" for submitting her pay claims but before she had the run in with K she had been allowed to submit her claims the following Monday.

The appellant was referred to a spreadsheet that detailed her earnings month by month for the years 2006 to 2010 inclusive. She explained that in 2006 and in 2007 she was also working for another company and in 2007 K had asked her to transfer all of her tax credits to them so she could work full-time. The change over occurred in November 2007. She accepted that there were a number of fluctuations in her earnings month to month over the years but this was her choice and she had never envisaged work drying up. It was put to her that when the company refused to sign her income continuance form that she issued them with the RP 77, the appellant responded by saying the HR manger had said to her at this time why did she not leave. The appellant was referred to a document showing her earnings for the counter notice period. The appellant maintained that her work had dipped again after this period and also that as a part-time worker she had a right to request full-time work. She was referred to the turnover of the respondents since 2006 to present; the appellant accepted that there was a downturn however she should have the same rights as those employed in the office. It was pointed out to her that the company had made eight people based in the office redundant.

In reply to questions from the Tribunal she said she was on the dole for days and there were blocks of weeks that she had received no work. She was continuing to work for the respondent because she had received assignments.

Respondents Case

The field manager gave direct sworn evidence on behalf of the respondent. She is responsible for looking after 160 interviewers countrywide, 25 to 30 of which are based in Dublin. Interviewers

have a choice of when they want to work. The majority of assignments are on an adhoc basis; the company have two contracts that provide them with regular work. The turnaround on assignments is normally two to three weeks. She tries to assign the work fairly and each interviewer is told that if they get their assignments in quickly there may be more work available. Some weeks there may be no assignments.

The “cut off date” used to be on a Friday now it is a Tuesday. The appellant would ring her every month to check this “cut off date”. She had received a number of telephone calls from the appellant in early and late 2009 seeking more work but she had told the appellant she could not guarantee work.

Under cross examination she recalled that she did have to telephone the appellant one day in respect of a mileage query but she did not expect the appellant to come to the office in regard to this. It was put to her that after this everything had gone downhill for the appellant, she did not agree with this. The appellant was always assigned the work of their regular contract.

Next to give evidence on behalf of the respondent was the HR manager. She has worked for the company for 17 years, she commenced as a PA and her role changed over the years. In April 2009 the appellant told her she wanted redundancy as there was no work for her, she had informed the appellant a redundancy situation did not exist. The appellant then submitted a RP 9 form, which in turn the respondent counter noticed. They could never guarantee work but they did say that the appellant would get her fair share of work that came in. She was satisfied that the respondent had complied with their obligations under the RP9 form. She continues to receive telephone calls from the appellant in respect of her redundancy throughout the summer. The appellant then served the RP77, on receipt of this she wrote to the appellant informing her that there was no change in her employment.

She had contacted the LRC regarding the appellant with the hope of obtaining some mediation but then they had received notification of the appeal lodged with the Employment Appeals Tribunal. Since this the respondent has continued to give assignments to the appellant. She has had a number of telephone conversations with the appellant about Social Welfare. They are a large market research company and are familiar with the requirements of Social Welfare. It is commonplace that interviewers work for other market research companies. The appellant is the only interviewer to apply for redundancy out of 160.

Under cross-examination she denied that she had told the appellant that she was just a piece worker nor had she told her to just leave. They received a letter on a weekly basis from Social Welfare showing what the appellant was claiming from them. If they offered work, which was subsequently cancelled, they would pay their interviewers a token cancellation fee.

Determination

Based on the evidence adduced at the hearing the Tribunal are satisfied that the company complied with their obligations under the Redundancy Payments Acts when they counter served the RP 9 form. Therefore the appeal under the Redundancy Payments Acts, 1967 to 2007 is dismissed. Accordingly as the appellant is still employed by the respondent her claim under the Minimum Notice and Terms of Employment Acts 1973 – 2005 must fail.

As no evidence was adduced at the hearing in relation to the Organisation of Working Time Act 1997, this appeal is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

