

**EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL(S) OF:**

Employee

– *appellant*

**CASE NO.**

RP958/2008

MN1031/2008

against

2 Employers – respondent

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T. Gill  
Ms H. Henry

heard this appeal at Loughrea on 6<sup>th</sup> April 2009  
and 15th June 2009

Representation

Appellant: In person

RespondentXXXX

The decision of the Tribunal was as follows:

On the first day of the hearing the Tribunal extended the time allowed to submit the redundancy claim.

Background

The appellant was employed as a teacher in a pre-school for children of the travelling community. The objective of the pre-school was to prepare these children to attend National School. The average age of the pupils was three.

## **Appellant's Case.**

The former chairman of the board of the pre-school gave evidence. The appellant asked him to go on the school board in 2001 and he was elected chairperson. This committee comprised of three people, himself, a retired Garda and a teacher. They ran the school on a daily basis. If they incurred any problems while doing so they called in the visiting teacher. The appellant's salary came from the department in the appellant's name with the details of PRSI contribution and PAYE deductions.

This money was paid electronically by the department on a monthly basis. In turn the board paid the appellant at the end of each month. They deducted the PRSI and the PAYE as instructed by the department. The board submitted the tax returns to revenue and issued the appellant her P60 each year. The school was noted as the employer on these.

He agreed with the chair that they as a board had a fair degree of autonomy from the department. They did follow the department guidelines regarding opening and closing hours of the school. They also received funding from POBAL towards the overheads of the school. The school had no surplus funds. A visiting teacher circa three times a year, arrived to examine how they were operating and would let them know if anything needed to be addressed.

In September 2006 the board decided to inform the families that unless pupils numbers increased the school may have to close. The pupil numbers did not increase so the school closed on the 7<sup>th</sup> February 2007. The board sent notification to the department to advise them of the closure. They received a reply on the 25<sup>th</sup> July 2007 from the department stating that they were happy for the school to close.

The appellant was out sick at the time of the closure since 5<sup>th</sup> October 2005. The appellant contacted this witness in March 2007 to inform him that she was fit to return to work. She provided him with a fit to work certificate. As they had no employment for the appellant he passed this certificate on to the department as they might have transferred her to another post. When the appellant was out sick they used the money provided by the department to pay a replacement. The department were made aware of the appellant's absence at the time.

The appellant gave evidence that she was employed as a teacher on a pro rata basis. She worked in conjunction with the national schools calendar. She maintained that her contract was with the department as the visiting teacher had interviewed her for the post. In previous experiences in dealing with pre schools they could be closed if there were not enough pupils attending. These could then be re-opened on the direction of the department. The department had provided her with an in service day for training.

## **Respondent's case**

A representative of the department gave evidence. The travellers' pre schools came in to existence in the mid 1980s and were mainly funded by N.G.O.s. The department got involved in the funding of same. The schools normally opened three hours a day and followed the pattern of the school year. In respect of the teacher member of the board, she explained that if a teacher chooses to be involved in a committee of a pre school it is their choice. The department did not place this teacher on the committee of the school. The department did not issue guidelines or circulars to these pre schools. They did fund 98% of the appellant's wage.

The school closed without reference to the department in February. The consent of the department is not and was not required to give effect to the decision of the board to close the school. She saw no correspondence from the school in February stating their intentions. The closure first came to

her attention in July 2007. The board of management were the appellant's employer; the department through funding allowed the school to operate. She was not aware that the appellant was out sick at the time of the schools closing; personnel section in Athlone may have been aware of her absence. The appellant did not write to the department to inform them that she was fit to return to work.

In response to questions from the Tribunal this witness explained that following consultation with all interested parties a policy document was published and it has been decided that all segregated schools should be closed. The department supports this policy of closure. If the department withdrew their funding from the segregated schools they could continue to operate. In the most recent segregated schools to close, the HSE instigated these closures. There are currently twenty-nine travellers pre school in existence but the recent government budget will accelerate their closure.

### **Determination**

The Tribunal having considered all the evidence in this case have reached the following decision. The board of management were in charge of the day to day running of the pre-school. They made the ultimate decision to close the pre school. The board of management were the appellant's correct employer.

The Tribunal finds that the appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date of Birth:	3 <sup>rd</sup> September 1945
Employment commenced:	1 <sup>st</sup> May 1992
Date of Notice:	7 <sup>th</sup> February 2007
Employment ended	29 <sup>th</sup> March 2007
Gross weekly pay: The Tribunal assess the gross weekly pay based on the statutory documents provided to be	€355.58

This award is made subject to the appellant fulfilling current social welfare requirements in relation to PRSI contributions.

The Tribunal, taking in to account that the appellant was unable to work the period of her notice dismisses the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)