

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

–Appellant

CASE NO.
RP66/2009

against
Employer

– First named respondent

Employer

– Second named respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL
Members: Mr M Murphy
Mr J Moore

heard this appeal at Navan on 30th June 2009

Representation:

Appellant(s): In Person

Respondent(s): McAlister O'Connor, Solicitors, Abbey Rd, Navan, Co. Meath

The decision of the Tribunal was as follows: -

Determination

The Tribunal is satisfied that the second named respondent is not a legal person but rather a name or description of the appellant's former workplace and therefore the Tribunal dismisses the claim against the second named respondent.

The first named respondent denied being the employer of the appellant. The first named respondent claimed that the appellant was instead an employee of a certain limited liability company. As the appellant was unrepresented the Tribunal indicated to the appellant that she may wish to issue a form T1A making her claim for redundancy against the limited liability company also. In this way the appellant would have a claim against whichever one turned out to be the employer. The Tribunal is disinclined to dismiss the claim against the second named respondent until the appellant has had a reasonable opportunity to bring the limited liability company properly before the Tribunal such that the company has the opportunity to rebut the contention that it is the relevant employer.

In support of her contention that the limited liability company is the correct employer of the claimant, the representative for the second named respondent furnished the Tribunal with P60

forms for the years 2005, 2006, 2007 and 2008.

The appellant stated that she had worked there for 6 years and had been paid €400 per week throughout the entire period without any increase, not even a cost of living increase. The appellant stated that this figure was net pay and was often paid in cash. The appellant was never furnished with a contract of employment or statement of terms and conditions of her employment and that she had not received payslips either. The appellant had never been provided with a P45 and had not seen the P60 forms until they were presented to the Tribunal.

The Tribunal noted that the weekly net pay appeared not to vary from year to year irrespective of any budgetary changes that may have occurred. The appellant stated that she had worked for the full year of 2005, however the sum declared in the P60 for that year appears inconsistent with that statement. The Tribunal therefore directs that a copy of this determination be forwarded to the Revenue Commissioners.

The Tribunal finds that the appellant has failed to discharge the burden of proof upon her to prove that the first named respondent was the employer of the appellant at this hearing. The Tribunal has also had regard to the lack of information provided to the appellant by her employer such as to cause this difficulty to the appellant in identifying her employer. The Tribunal also notes that the first named respondent was in a position to obtain P60's from the limited liability company and the Tribunal further notes that there appears to be close family connections between the directors of this company and the first named respondent. Therefore the Tribunal wishes to afford to the appellant the opportunity to bring a claim against the limited liability company, (and indeed any other person or company that might be the relevant employer), prior to finalising its decision dismissing the claim against the first named respondent. On the other hand the Tribunal is not willing to leave the matter hanging indefinitely over the first named respondent. The appellant has stated that her date of termination of employment was 5th December 2008. The Tribunal notes that a claim for redundancy must be brought within one year of the date of termination (which time limit may be extended to two years where exceptional circumstances prevented the bringing of the claim). The Tribunal determines that the claim against the first named respondent be dismissed effective on 5th December 2009 unless the appellant has by that date served a form T1A on the limited liability company which has been suggested by the first named respondent to be the relevant employer.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)