

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE -*Appellant*

RP1395/2008

against

EMPLOYER - *Respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. G. Phelan
Mr. T. Kennelly

heard this appeal at Ennis on 10th June 2009

Representation:

Appellant: In Person

Respondent: Mr. Gearóid Howard, Crimmins Howard, Solicitors, Dolmen House,
Shannon, Co. Clare

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant commenced employment with the respondent on the 10th October 2005. The appellant's position was that of bookkeeper and she received a weekly gross pay of €200.00 for 20 hours work.

During October 2008 the appellant informed a director of the company that she would be moving from Clare to Longford in December 2008. The director told the appellant that he would not replace her and that they would "sort something out."

On the 5th November 2008 the appellant met with the director who told her that business was very quiet. As a result of the decrease in business the director had reached a decision to make the position of Production Manager redundant.

The appellant's last day of work before she moved was to be the 28th November 2008 and

sometime before this date she asked the director to discuss the arrangements for work after she had moved. On the 27th November 2008 the director told the appellant that he could provide her with work one day a week at a rate of €10.00 per hour and that she should be able to complete the work in one day. The appellant told the director that she had “no choice but to go” as she could not drive for six hours for €80.00 and only eight hours work.

The appellant requested a letter stating that the business was downsizing (as the appellant did not consider that she had left her employment of her own accord) but the director did not provide her with such a letter.

During cross-examination the appellant confirmed that she had moved to Longford in December 2008 as planned. When the appellant told the director in October 2008 that she was moving he asked her if she would still be willing to work two days per week. The appellant was not resigning at that time but she was telling him out of courtesy that she would be moving in December 2008.

The appellant accepted that her rate of pay for 20 hours work had also been €10.00 per hour but the director had told her that he would make it worth her while to work the two days. The appellant accepted that the company’s books were not good for October and November 2008.

Respondent’s Case:

A director of the company gave evidence to the Tribunal that the appellant had informed him of her personal situation. They had a very good working relationship. The appellant informed him during October 2008 that she was leaving and moving to Longford in December 2008. The director was sympathetic to the appellant’s circumstances and he told the appellant that he was sorry to see her leave, as she would be a loss to the company. The director suggested to the appellant that maybe they “could work something out” if the appellant was travelling between Longford and Clare.

On the 3rd November 2008 the director met with the bank and as a result he reached a decision to make the position of Production Manager redundant. As far as the director was concerned the appellant was leaving his employment and therefore redundancy was not mentioned in relation to her situation.

It was agreed between the appellant and the director that she would finish work on the 28th November 2008. On the 27th November 2008 the appellant prepared her own P45, wages and holiday pay due. The conversation on this date was described by the director as that of “two friends parting” and was not a work-related discussion.

During cross-examination the director accepted that during a discussion with the appellant he had mentioned the possibility of part-time work to her.

In reply to questions from the Tribunal, the director stated that the work available to the appellant was that of basic paperwork, which she would have been able to complete in less than a day.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. It was the appellant’s evidence that she informed the director of the company that she would be moving from Clare to Longford. The director subsequently made the appellant an offer of work but this was not suitable to the appellant. The Tribunal does not find that a redundancy situation existed as the appellant

resigned from her employment. The appeal under the Redundancy Payment Acts, 1967 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)