

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:  
Employee

**CASE NO.**  
RP355/2009, MN356/2009

against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Mr M. McGarry

heard this appeal at Castlebar on 22nd September 2009

### **Representation:**

Appellant : Ms Anne Coyne, Castlebar Citizens Information Centre,  
Cavendish House, Link Road, Castlebar, Co Mayo

Respondent : No representation listed

The appellant and her representative attended the hearing.

The Tribunal granted Ms Anne Coyne, Castlebar Citizens Information Centre liberty to represent the appellant. The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn by her at the outset of this hearing.

The Tribunal was handed in a copy of the Rights Commissioner decision of John Tierney dated the 17<sup>th</sup> October, 2008 in respect of the appellant's prior claim against the Respondent for unfair dismissal. The appellant's representative advised the Tribunal that the appellant had decided not to file any appeal against the decision of the Rights Commissioner in this matter. The appellant's representative advised that the appellant had in the alternative decided to make a claim under the Redundancy Payments Act.

The Tribunal queried the appellant's representative as to the jurisdiction of, and justification for the Tribunal in dealing with a claim for Redundancy when a decision of the Rights Commissioner had been notified to the Tribunal in circumstances where the Rights Commissioner had found that the appellant had been fairly dismissed. The appellants Representative was not in a position to assist the Tribunal with any legal submissions, apart from stating that it was her belief that the appellant

was entitled to bring such a claim under the Redundancy Payments Act, despite the prior unsuccessful claim made to the Rights Commissioner.

The decision of the Tribunal was as follows:

### **Determination**

The Tribunal in this case was presented with an unusual set of circumstances. The appellant had already brought a claim for unfair dismissal before a Rights Commissioner (as she was perfectly entitled to do), and her claim was dealt with by the Rights Commissioner. It is clear from the decision of the Rights Commissioner proffered to the Tribunal by the appellant's representative, and received by the Tribunal, that the appellant was represented at the hearing before the Rights Commissioner and that no submission was made to the Rights Commissioner that the dismissal was by way of redundancy. It is noteworthy that the appellant's claim before the Rights Commissioner was that she was unfairly dismissed and that the respondent's defence to this was that the appellant was fairly dismissed for misconduct. The Rights Commissioner while pointing out that the respondent's actions had not been procedurally sound decided the appellant had not been unfairly dismissed and dismissed the appellant's claim.

The Tribunal was therefore faced with a situation where the appellant's claim for unfair dismissal, without any mention of Redundancy being made, had been fully aired before a Rights Commissioner, the Rights Commissioner had dismissed her claim and had agreed with the Case being made by the respondent and the appellant had chosen not to file any Appeal against the decision of the Rights Commissioner.

The appellant's representative's sole submission was that the Tribunal was still entitled to deal with a claim for Redundancy by the appellant. This was presumably based on the fact of the absence of any specific prohibition in the Redundancy Payments Acts, prohibiting a claim for Redundancy being made where there has been a prior decision of a Rights Commissioner in a claim for Unfair Dismissals. The Unfair Dismissal Acts do contain such a specific prohibition. Because the Rights Commissioner has no jurisdiction to deal with a claim for Redundancy any such claim must be brought before the Employment Appeals Tribunal Ab Initio. It is therefore possible to contemplate, in very rare circumstances that a claim for Redundancy could be made after an unsuccessful claim for unfair dismissal before a Rights Commissioner. The only circumstances in which the Tribunal considers this could arise however, is where, in response to a claim for unfair dismissal before a Rights Commissioner, the respondent raises the defence that the appellant had been dismissed wholly or mainly by reason of redundancy. In those circumstances it would follow logically that the appellant would then be entitled to bring a fresh claim for redundancy before the Employment Appeals Tribunal.

In this case however, no such circumstance arises and the Tribunal must therefore consider the import and effect of the un-appealed decision of the Rights Commissioner in this matter. The Tribunal is of the view that it would be an abuse of process for the Tribunal to agree to grant the redundancy claim of the appellant in this matter in view of the un-appealed decision of the Rights Commissioner. Having brought the claim before the Rights Commissioner and failed to bring any appeal, the appellant is bound both by the decision of the Rights Commissioner and the reasons therefor. The Redundancy Acts allow for a defence on the basis that a claimant has been dismissed on the basis of misconduct and this decision has already been given by the Rights Commissioner in this case. The Tribunal therefore determines that the appellants claim is hereby dismissed.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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

