

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.
EMPLOYEE RP769/2008

against

EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr M. Murphy
Ms M. Maher

heard this appeal at Dublin on 12th December 2008
and 9th November 2009
and 10th November 2009

Representation:

Appellant(s): Mr. Brendan Kirwan BL instructed by
Mr. Kieran Kelly, Fanning & Kelly, Solicitors, 2 Hatch
Lane, Hatch Street, Dublin 2

Respondent(s): Mr. Tom Mallon instructed by Matheson Ormsby Prentice, Solicitors,
70 Sir John Rogerson's Quay, Dublin 2

The decision of the Tribunal was as follows:-

The appellant was Fund Administrator in the Irish branch of a global fund services company, which was responsible for 60 billion dollars in assets. This organisation merged with a larger one responsible for a total of 240 billion dollars worth of assets. As a result of the merger the appellant's position as Fund Administrator became redundant. The appellant applied for a new position as Head of Fund Operations for Ireland in the merged entity but he was unsuccessful. He was later offered the position of Head of Fund Accounting for Ireland. He refused to accept this position, he described it as a demotion and during the hearing his case was that in that job his standing in the industry would be reduced and that it would be a backward career step.

The issue before the Tribunal arises under section 15 (2) of the Redundancy Payments Act, 1967 as follows:

“An employee who has received the notice required by section 17 shall not be entitled to a redundancy payment if in the period of two weeks ending on the date of dismissal

- (a) his employer has made to him in writing an offer to renew the employee’s contract of employment or to re-engage him under a new contract of employment
- (b) the provisions of the contract as renewed, or of the new contract, as to the capacity and place in which he would be employed and as to the other terms and conditions of his employment would differ wholly or in part from the corresponding provisions of his contract in force immediately before his dismissal,
- (c) the offer constitutes an offer of suitable employment in relation to the employee
- (d) the renewal or re-engagement would take effect not later than four weeks after the date of dismissal , and
- (e) he has unreasonably refused the offer”.

The issue before the Tribunal is whether the position offered to him was “suitable employment” and if so whether he “unreasonably refused the offer”.

The Tribunal heard evidence and legal submissions over a number of days. In his previous role the appellant had four functions as follows: (1) Fund Accounting, (2) Transfer Agency, (3) Financial Reporting (Funds) and (4) Business Change activities across both jurisdictions.

While his pay and conditions would remain the same there would be changes in his role and functions. The offer of alternative employment was largely confined to fund accounting. In addition his responsibilities had extended to the jurisdiction of Luxembourg. He also raised an issue about Hedge Funds. The Tribunal heard detailed evidence from both sides on all these points.

Determination

The Tribunal is satisfied that there would be no diminution in the claimant’s standing. The somewhat narrower range of functions would be exercised in a much larger context administering a fund four times as large from 60 to 240 billion dollars. This could in no way be described as a backward career step.

The Tribunal finds that the position offered was “suitable employment” within the meaning of section 15(2) (c)

“the offer constitutes an offer of suitable employment in relation to the employee”

The Tribunal is also satisfied that the appellant “unreasonably refused the offer” under Section

15 (2) (e).

In this context the Tribunal has regard to the appellant's failure to respond to several invitations to put forward any suggestions about his future role. The appellant, according to his own case held a very senior position and he was given a reasonable opportunity to help solve the problem. The appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

