

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

RP397/2009

EMPLOYEE - **appellant**

against

EMPLOYER - **respondent**
under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Mr M. Kennedy
Mr. P. Woods

heard this appeal at Dublin on 5th October 2009

Representation:

Appellant :

Ms Krystian Boino, The Polish Chaplaincy In Ireland, Social
& Legal Advice Centre, St Audoen's Church, 14 High Street,
Dublin 8

Respondent :

Mr Mark Fitzgibbon, Lavelle Coleman, Solicitors, 51/52
Fitzwilliam Square, Dublin 2

The decision of the Tribunal was as follows:-

The appellant was paid a redundancy lump sum based on her service from 3rd April 2006 to 2nd January 2009 and a weekly salary of €209.70

Respondent's Case

The appellant was employed to look after the respondent's two children aged seven and ten years. As the school attendance and after school activities times changed, the appellant's working hours were also affected. The respondent was self employed and worked from home. Some of the appellant's duties included answering the telephone and collecting deliveries in connection with the business. In September 2008, the respondent's working hours were reduced as work was

‘dryingup’. She was on sick leave from 26th August to 4th October 2008 and during this time friends and family stepped in to help. When the appellant returned to work in 2008 her duties were reduced considerably. The respondent explained that she could no longer afford to pay her the original salary and her pay was reduced to reflect the reduction in her hours and duties. The appellant continued to work and in December 2008 the respondent had to make her redundant because her business was in financial difficulty.

Before the appellant’s wages were reduced her weekly salary was €409.50. In addition she had the use of a car, which she could also use for private use, plus expenses. After her hours were reduced her weekly salary was €209.70. Her Redundancy was paid based on this reduced sum.

In cross-examination, the respondent stated that she had hoped to retain the employee at the reduced hours but unfortunately due to the recession this was not possible. On 9th September 2008, the respondent set out in writing the new schedule for the children’s school and after school activities and this was sent by registered post to the appellant. It was the end of September before the respondent realised the full impact of the new children’s schedule on the appellant’s working hours.

Appellant’s Case

The appellant commenced her employment on 3rd April 2006. She outlined her duties which included child minding, household chores and school delivery and collection. She could not understand the impact the change in the length of the school day of the daughter had on her working hours. She told the employer she did not understand why her hours were reduced. She would not agree to part-time work. She said she had often worked longer hours to facilitate the employer. She said she never asked for money for overtime but had more time off during the summer months. She felt that she had the same amount of work to do but that the employer expected her to do it in four hours where previously she worked for eight hours.

She never agreed to work reduced hours. She had no money and her husband did not work. She was pregnant and no one else would employ her. She told the employer of her pregnancy on 25th August 2008. She was on pregnancy related sick leave from 26th August until 4th October and on 6th October she was told that her hours were being reduced. The employer told her that the household work would be ‘hard’ during the reduced working hours and the appellant’s response was that she would work as normal that she was just pregnant and that it was not an illness.

In cross-examination, witness verified that the respondent told her that the housework would be ‘hard.’ She said in relation to the reduced work hours, she was not given a choice.

In answer to questions from Tribunal members, the appellant stated that the respondent was generous and had paid her air fare to Poland on more than one occasion and had given her bonuses at Christmas and on the occasion of her marriage.

Determination:

The Tribunal confirmed on two occasions that the only matter before it was the question of the amount of the redundancy payment. The appellant continued to work after 6th October 2008 when

she was told her hours were to be reduced. The evidence from the respondent was the appellant accepted the change in circumstances and continued to work. The Tribunal is unanimous that the appellant was paid the correct amount of redundancy and in all the circumstances the appeal under the Redundancy Payments Acts, 1967 to 2007 fails

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

