

EMPLOYMENT APPEALS TRIBUNAL

APPEAL (S) OF:

CASE NO.

EMPLOYEE

RP650/2009

against
EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr. A. O'Mara
Mr A. Butler

heard this appeal at Dublin on 8th January 2010

Representation:

Appellant(s) Brian Crowe & Company, Solicitors, Newcourt, 177 Harold's
Cross Road, Harold's Croos, Dublin 6

Respondent(s) Mr. Seamus Given, Arthur Cox, Solicitors, Earlsfort Centre, Earlsfort
Terrace, Dublin 2

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant outlined to the Tribunal the details of the settlement she signed on 10 September 2008. She could not recall when the document was produced and she received a copy from the respondent in August 2008. She commenced employment with the respondent through an employment agency in October 1990. She was given another two-year contract with the respondent between 1994 to 1996 and she was then made permanent. She had an issue in that the years of service from 1990 to 1994 were not included in the redundancy calculations. Her employment with the respondent ceased on 19 September 2008.

As far as she could recall she requested details of her service in March 2008 and she was informed that her service between 1990 to 1994 was not included in the redundancy. She stated that in previous redundancy situations in the respondent employees received redundancy if they were employed by an agency and she believed she was entitled to this.

The respondent provided her with a legal representative whom she met the week of the 4 September 2008 and he informed her that four years was missing from her redundancy calculations. She received a call from her solicitor at 2pm on 5 September 2008 and she had to decide by 5.30p.m. that day the way to proceed. Prior to this date she was in the office on an ad hoc basis. Part of her role was transferred to Edinburgh and she did not have work to do. When she did go to the office it was embarrassing as her colleagues asked her where she was.

She signed the document as she felt she had no choice and she was always unhappy about the four years service that was not included. Her solicitor told her if she signed the document it would be difficult to challenge it in the future. As far as she could recall her solicitor told her if she did not sign the agreement and wished to take the matter further he would not have a problem representing her in taking a case against the respondent. She made the decision to sign the document and she had no alternative.

In cross-examination she stated that she undertook work in the pensions area and she was involved in redundancies in the respondent. The document that was sent to her on 20 August 2008 by the respondent regarding her severance terms was modified at the request of her solicitor. She stated it was unusual for an employee to be sent to a solicitor regarding redundancy especially at her level. She felt the reason for this was that the respondent did not want to pay her the four years redundancy. She believed that the solicitor the respondent provided for her acted as an independent advisor. She reiterated that she signed the document on 10 September 2008, as she had no choice. She did have a choice to return to work but she did not have any work to do. When put to her that on 5 September 2008 she was informed she could return to work on 8 September 2008 and on 10 September 2008 she signed the agreement she replied she went to the solicitor to sign the agreement.

Determination

It is the unanimous decision of the Tribunal that the appellant had free will regarding the document she signed dated 10 September 2008. In her own evidence she received independent legal advice and she was satisfied with same. The appellant stated that her solicitor did not recommend the deal and he told her if she had misgivings about the deal he would represent her. It would be very unfair for the Tribunal to look behind the document, which the appellant signed. The appellant said she was well aware of the alternative but despite this she did sign the document. The Tribunal notes that the appellant did not seek alternative legal advice and that she had adequate time to do so. The appeal under the Redundancy Payments Acts 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

