

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE - *appellant*

CASE NO.  
RP884/2009  
MN827/2009  
WT350/2009

Against

EMPLOYER - *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. R. Murphy  
Ms. A. Moore

heard this appeal at Navan on 3<sup>rd</sup> February 2010

#### **Representation:**

Appellant : Kings Solicitors, 2 Inns Court, Winetavern Street, Dublin 8.

Respondent: Emma Brown B.L. instructed by Murphy Coady & Company Solicitors, Commons Road, Navan, Co. Meath

The decision of the Tribunal was as follows:-

#### **Respondent's Case**

The respondent has conceded that a redundancy situation existed but the appellant's gross weekly pay is in dispute. The respondent closed the company, a fast food restaurant, as the business was no longer financially viable. The appellant was not given notice of this as she was abroad when the decision was made to close the business and had not returned by the time the business did close.

The appellant was initially employed to work one 8-hour shift a week which rose to 4 shifts a week. Towards the end of the appellant's employment she took up a full-time FAS course and requested to work only the Friday and Saturday shifts which was a total of 16 hours per week.

### *Cross Examination*

The respondent completed the rosters every Sunday night to commence on the following Monday. The appellant requested to work only 2 shifts from April or May 2008. The appellant was paid a composite hourly rate to include her holiday pay.

### **Claimant's Case**

On commencement of employment the appellant agreed a rate of €80.00 per shift with the respondent but never asked for it to be 'cash in hand.' There was never tax or PRSI paid on behalf of the appellant. If the appellant wanted to take holidays she wrote it down in a book. On her return from holidays she rang the respondent to inform him she was back and to put her on the roster. The appellant took three weeks holidays in August and ten days in October 2008 but was never paid for them.

The appellant rang the respondent as normal on her return from holidays in October 2008. The respondent's son answered the phone and informed the appellant the business was closing. The appellant phoned the respondent a few days later and asked why he didn't tell her the business was closing, he replied "*there are lot's of people without a job your not the only one.*" The appellant worked four shifts per week on occasion three shifts, but she has never worked only two shifts per week. The appellant had no contract of employment.

### *Cross Examination*

The appellant was enrolled in a full-time secretarial course with FAS. As well as taking the course the appellant worked 3 – 4 shifts per week. The weekend shifts were a normal start time and the shifts during the week had a later start time to accommodate the appellant's course. The appellant returned from holidays towards the end of October and worked another few days before the respondent closed. The appellant requested her holiday pay but the respondent said, "*You don't get holiday pay because I pay over the minimum wage.*"

### **Determination**

The respondent conceded that a redundancy situation existed. The Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

|                       |                               |
|-----------------------|-------------------------------|
| Date of Birth:        | 1 <sup>st</sup> December 1970 |
| Date of Commencement: | 1 <sup>st</sup> August 2005   |
| Date of Termination:  | 20 <sup>th</sup> October 2008 |
| Gross Weekly Pay:     | €160.00                       |

The award is based on the appellant having been in insurable employment during this period.

Based on the evidence adduced, loss having been established, the Tribunal awards the claimant €320.00 being the equivalent to two weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The Tribunal also finds that the appellant is entitled to her statutory holiday entitlements for the last year of employment, therefore awards the appellant the sum of €1328.00 being the equivalent of

16.6 days pay under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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