

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE *-appellant*

CASE NO.
RP979/2009

Against

EMPLOYER *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. A. O'Mara
Mr. P. Trehy

heard this appeal at Navan on 4th February 2010

Representation:

Appellant: Ms. Ruth Mylotte instructed by Liam Keane & Partners, Solicitors, The Old Toll House, Dunshaughlin, Co Meath

Respondent: Mr Michael O'Sullivan, Human Resources Advisor, Castlelost West, Rochfortbridge, Co. Westmeath

The decision of the Tribunal was as follows: -

Respondent's Case

The respondent is a hair salon with a premises located in the centre of a town for 19 years. In early 2006 the respondent realised that the salon was no longer financially viable. The respondent visited the appellant at her house and told her the salon was moving premises and asked if she was interested in moving. The respondent offered the appellant a share in the business if she would move. The respondent asked all the staff of the salon to move to the new premises, which were located in a different area to the original premises, all the staff declined to move. The new premises were converted buildings on the respondents land so made much more financial sense. The respondent re-located in July 2008 and the business sold in September 2008.

Previously the respondent had offered to sell the business to the appellant.

The respondent was anxious that the appellant join her in the new premises as they had been working together for 19 years with the appellant being the salon manager when the respondent was away. At the end of May the appellant informed the respondent that she would have to pay her

Redundancy. The respondent said the appellant was not being made redundant and clearly informed her that her job was still available for her. The following week the appellant told all the other salon staff that if the respondent did not pay them their redundancy she would get her representative to sort it out. The appellant went on Maternity leave on the 30th of June 2008. On the 28th of November the appellant requested an extension for her Maternity leave. The respondent wrote to the appellant on the 31st of January 2009 inquiring as to when the appellant would be returning to work. The respondent received a letter for the appellant dated the 30th of January 2009 requesting that she be made redundant. The respondent replied stating that,

“Your job is open and available to you when you return from Maternity leave.”

There was no change to the appellant’s Terms & Conditions of Employment between the old and the new premises. The travel distance was not greatly different from the appellant’s house to the old salon and the new salon. The appellant would retain her flexible working environment.

Cross Examination

The job offered to the appellant was the same job she had been doing, her salary and commission would have remained the same or similar. The appellant had enough clients to keep her commission at the same level. The respondent refuses clients she does not have time for; there is plenty of work for the appellant if she wanted it. The respondent disputes that the commute would have increased by 30 minutes each way to the new premises.

Claimant’s Case

The appellant was a hair stylist and manager for the respondent. The appellant had 70% of the clientele in the salon. The first conversation with the respondent was about relocating and becoming a 50% shareholder in the business. The appellant declined this offer, as it would not suit her circumstances. The appellant had a lot of local clients she felt would not travel out to the new premises and as a result she would lose a significant amount of commission and tips. The appellant needed the flexibility of working in a town as her child was in a local crèche and it was convenient to be able to run out to do any errands or in case of an emergency. The appellant felt she would be isolated in the new premises. The appellant is originally from the area the respondent was moving to and knows it would be an extra 30 minutes on her journey to work. The appellant had previously turned down the offer to buy the business outright, as she could not afford it.

The appellant told the respondent she would not be moving to the new premises in July 2008. The appellant reminded the respondent that she had offered her redundancy; the respondent said she now needed to get advice regarding the redundancy. The appellant found it difficult to engage the respondent in conversation regarding the move as the situation was very upsetting.

Determination

The Tribunal find by majority decision with Mr. O’Mara dissenting that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007.

Mr. O’Mara finds in his dissenting opinion that in the context of the relocation of the business, he is satisfied that the claimant was offered, inter alia, a continuation of her employment under her current terms and conditions of employment. Similarly he is satisfied that this was a reasonable offer by the Employer for the continuation of the claimant’s employment and there were no reasonable, work related, grounds for the claimant to refuse that offer. The contract of employment

was not terminated by the Employer and in these circumstances the claimant is not entitled to a redundancy payment.

Determination

The Tribunal having considered the evidence presented by the parties determine that the position for which the appellant was employed would cease to exist on the date the salon was closed. The Tribunal by majority finds that the appellant's position was redundant on that day. The offer made by the respondent to the appellant of a position in her new salon in the second premises would have involved additional driving by the appellant. The additional time would not have made the position unreasonable in itself however the other conditions attached to the position were not specified in the offer. Three options were put to the appellant. The first offer was that the appellant have a share in the new business, the second was that she buys the business in town and the third was that she move with her clientele to the new premises. The first two of the above could not be considered suitable alternative employment within the meaning of the legislation, as they were not offers of employment. The third offer does not express the conditions under which the appellant was expected to work. This offer was tenuous and not in the opinion of the Tribunal a reasonable offer. It follows that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

| | |
|-----------------------|--------------------------------|
| Date of birth: | 29 th December 1968 |
| Date of commencement: | 15 th June 1995 |
| Date of termination: | 31 st March 2009 |
| Gross weekly pay: | €535.00 |

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)