

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE - **appellant**

CASE NO.
RP1027/2009
MN932/2009

against

EMPLOYER - **respondent**

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr C. McHugh
Mr. P. Woods

heard this appeal at Dublin on 11 February 2010

Representation:

Appellant: The appellant in person

Respondent: Mr Patrick Kelly, Kelly & Co Accountants, 9 Eyre Street,
Newbridge, Co. Kildare

The decision of the Tribunal was as follows:-

Respondent's Case

JR told the Tribunal that a warning letter was issued to the appellant on 11 February 2009. A customer was not happy with the appellant and the appellant received a number of verbal warnings.

JR stated that the appellant had a negative attitude. The respondent provided in house training. The appellant did not have the confidence to do her job. The appellant was furnished with a good reference and she was reliable and trustworthy. The appellant felt that she would not make it as a hairdresser and she hoped to get a job as a receptionist. He told the appellant to go on a week's holiday and then decide what to do. When she returned from holidays she was given a week's notice and there were no prior meetings with the appellant. The appellant had been cautioned about her work prior to her receiving a written warning. A daughter of one of the owners was taken on in the respondent after the appellant was let go.

In cross-examination he stated that when the appellant returned from holidays she had a negative attitude. In eleven and a half years he never let anyone go, this was a once off. The respondent now

has a second year apprentice and she is ahead of the appellant in her training. The appellant did not feel competent to do the job. The appellant was called to a meeting after work and she told him she did not want a representative at the meeting.

He did not know that the appellant had booked a second week in May for her holidays. He did not tell her that she could not take holidays. The courses that the respondent organised were on a notice board. The issue was that the appellant was doing less and less work.

Appellant's Case

The appellant told the Tribunal that she had a great working relationship with her colleagues and she got on well with customers. She was made aware that a customer had made a complaint about her and this was "out of the blue". Before her holidays she was asked to improve and take on more clients. If she had any inclination that she was going to be let go she would not have taken her holidays. She missed training in February as she was on holidays and overstayed for three and a half days. She got a present of a holiday for two weeks in May. She was not aware that a course was scheduled for May. It was not due to her workmanship that she was let go six months before she completed her apprenticeship.

In cross-examination she stated that she was aware in November 2008 that there was a course on in February 2009. She informed the respondent that she had received a present of a two-week holiday in May at the end of February and she gave two to three months notice. There was no issue about her taking two weeks holidays. The appellant would have been happy to complete her course, she loved the job and she completed the in house training.

Since she was dismissed she applied for jobs in the hairdressing sector but to date has not been successful. She completed a five-week computer course in FAS.

Determination

It is common case that the daughter of one of the respondents replaced the appellant.

Section 7 (2) (c) of the Redundancy Payments Acts, 1967 to 2007 provides that

an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to—

(c) the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or

and Section 7 (4A) of the Redundancy Payments Acts, 1967 to 2007 provides that

In ascertaining, for the purposes of subsection (2) (c), whether an employer has decided to carry on business with fewer or no employees, account shall not be taken of the following members of the employer's family-

father, mother, stepfather, stepmother, son, daughter, adopted child, grandson,

granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister.

Accordingly the Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria: -

Date of birth	21 February 1988
Date employment started	15 August 2005
Date employment ended	07 March 2009
Gross weekly pay	€350-00

This award is made subject to the appellant being in insurable employment during the relevant period.

The evidence having shown that the appellant received one week's notice on termination of her employment the Tribunal further awards €350-00, being one week's pay under the Minimum Notice and Terms of Employment Acts, 1977 to 2005.

Section Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)