

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE - *appellant*

CASE NO.  
RP52/2009

against  
EMPLOYER - *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Mr G. Hunter

heard this appeal at Letterkenny on 20th May 2009

#### **Representation:**

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Appellant: Mr Paddy Boyle, Impact, Letterkenny, Co Donegal

Respondent: C.S. Kelly & Co, Solicitors, Market House, Buncrana, Co. Donegal

The decision of the Tribunal was as follows: -

#### **Claimant's Case**

The claimant commenced work in November 1975, employed as a manager. The claimant was paid €250.00 into her bank account and €250.00 in cash. In 2002 the owner transferred the management of the company to his son who operated it until the company went into examinership in 2008.

The claimant ceased receiving wages on the 31<sup>st</sup> of January 2007 and was not notified that her employment was being terminated. The claimant had not worked for some time before this for medical reasons and was not replaced. The claimant did not pursue a claim with the examiner at this point as she had a personal relationship with the owner and did not want to put additional pressure on the situation. The claimant was not aware she was entitled to redundancy at this stage; she later discovered she could be entitled to redundancy from the new owners.

#### **Respondents Case**

The respondent purchased the company in good faith under the impression that the examiner had discharged all liabilities. The respondent submitted a copy of the High Court order to the Tribunal. The examiner held a meeting with all the original employees so they could make any claims for

monies due. The claimant did not claim at this point due to her personal relationship with the original owner.

## **Determination**

The Tribunal determines that the date of dismissal was the 31<sup>st</sup> of January 2007, and therefore this appeal was lodged out of time. There is however an application before the Tribunal on behalf of the appellant to extend the time for bringing an appeal under the above Act.

The Tribunal accepts that due to medical reasons the appellant did not submit her appeal to the Tribunal on time. In the circumstances, applying S.12 (2) (b) of the Redundancy Payments Act, 1971 Act which amends section 24 of the Redundancy Payments Act, 1967, the Tribunal finds that there is reasonable cause for extending the time for lodging of her appeal, and extends the time to allow her appeal to be heard.

The respondent's owners have changed since the appellant's employment ceased, and they were unable to contradict the appellant's evidence as to the circumstances of her employment and the ending thereof. Based on the claimant's evidence the Tribunal finds that the appellant was dismissed by reason of redundancy.

The respondent's defence to this claim was that the current owners purchased the respondent in good faith and without notice of any claim by the appellant. They contend that the claim should have been notified to the examiner during the period of examinership, and because this was not done the appellant's claim cannot succeed.

The appointment of an examiner to a company is accomplished under the provisions of the Companies (Amendment) Act, 1990. The appointment of an examiner to a company does not operate as a notice of discharge to employees of a company and it seems that the existing employees' statutory rights are preserved during an examinership. In this case, however the appellant had ceased to work for the respondent prior to the commencement of the examinership. What then was the status of the appellant? If she was a creditor of the company it could possibly be argued that her failure to notify the examiner could defeat her claim.

The appellant however had no entitlement to any payment from the respondent until she successfully prosecuted her claim before the Employment Appeals Tribunal. Her claim was not guaranteed of success, and only if and when an award was made in her favour would she become a creditor of the respondent. It is not disputed that she had been an employee of the respondent, and enquiry should have disclosed this to the new owners of the company, and put them on notice that the time had not yet passed until she was precluded from making a redundancy claim.

In the absence of any contrary provision in the Redundancy Payments Acts 1967 to 2007 it appears to the Tribunal that the appellant was entitled to make her claim notwithstanding the period of protection granted by the examinership.

The Tribunal therefore finds that the claimant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of birth	27 <sup>th</sup> January 1947
Date employment commenced	1 <sup>st</sup> November 1975

Date employment ceased  
Gross weekly pay

31<sup>st</sup> January 2007  
€500.00

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)