

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP517/2009

against

EMPLOYER

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr J. Hennessy  
Ms H. Kelleher

heard this appeal at Waterford on 22nd February 2010

Representation:

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Appellant :

Ms Emer Costigan, B.L., instructed by Derivan Sexton & Co.,  
Solicitors, New Street, Carrick-On-Suir, Co. Tipperary

Respondent :

Mr Michael Deasy, B.L., instructed by McMahon O'Brien, Solicitors,  
Mount Kennett House, Henry Street, Limerick

The decision of the Tribunal was as follows:-

#### **Claimant's case:**

In her evidence the claimant told the Tribunal that she commenced her employment with the respondent, a firm of architects in September 1982. The name of the firm subsequently changed to a partnership. She was employed as a secretary and worked in Waterford. For the first nine years she did general office duties and reception work. A receptionist was then employed and the claimant's duties changed to working as P.A. /Secretary for NF one of the partners with the firm. In 2003 the respondent merged with another firm and the number of employees increased from eleven to sixteen and when the claimant left there was a staff of fifty-two. The claimant also did P.A., typing and filing for other partners in the business in addition to diary management, certificates of compliance and dealt with planning regulations.

From 2006 the claimant was on a three-day week but continued to be paid at the full salary as if she was working five days. Another employee S covered the two days the claimant was absent. NF became ill in 2004 and from that time he was in and out of hospital. The claimant had a very good working relationship with NF and it was he she spoke to in relation to applying for annual leave. In or around the second week of December 2007 NF spoke with the claimant and said he would be retiring early in the New Year and that he had done a deal on her behalf with the other two partners and that she should talk to her Accountant in this regard. He mentioned that he would talk to his Accountant also and the claimant presumed that this meant she would receive a redundancy payment. He stated that redundancy was not an option as there were two other staff members who had similar length of service as the claimant. The package was discussed in broad terms initially. When the claimant spoke with her Accountant he recommended that the respondent should pay redundancy and they would be entitled to a 60% rebate. She went back to NF and told him of this recommendation.

One of the other partners left in March 2008 and NF had to stay on for a while to keep the business going. 75% of the claimant's work was for NF and 25% for the other partners. NF offered the claimant a job at Waterford airport and to report back to him as he was Chairman of the airport. There was no discussion with the claimant regarding a job in the partnership. At one point NF suggested to the claimant that she should get a lump sum together with a holiday and party and at Christmas 2007 the claimant said she would let him know what she decided. On 14<sup>th</sup> January 2008 the claimant called to NF's house and said she was leaving at the end of February. NF's wife told her that a package would be put together but that redundancy was not an option. The claimant was due holidays and it was agreed her employment would end on 7<sup>th</sup> March 2008. She trusted NF and felt he would look after her. On 28<sup>th</sup> April 2008 she met NF at his home and they agreed that the claimant would get information from a tax consultant regarding a package payment. She arranged to drop this information in to the office on 2<sup>nd</sup> May 2008. The next time they met was 14<sup>th</sup> July 2008 and the claimant was told by NF's wife that since she had now received her P45 that a lump sum could not be paid. The claimant received her P45 on 9<sup>th</sup> May 2008. In November NF rang the claimant and said he was gravely ill. She met NF in January 2009 and he died on 26<sup>th</sup> March 2009.

Since the claimant left there has been a downsizing and at least three employees were made redundant. She received a months salary and three days holidays when she left. The claimant stated that she does not know the word "retirement". When she handed in her notice it was NF who mentioned the word "retirement" and not the claimant. She felt NF could have written a personal cheque. She did ask for redundancy and none of the partners asked her to stay on. It was at the claimant's request that she changed to working on a part-time basis. She was offered a holiday and the use of an apartment and she possibly would not have left had she known what was to happen. She got a job working in a shop in August 2008 and applied also for lots of secretarial jobs. She felt she was made redundant.

In cross-examination the claimant accepted that at all times her salary was paid by the partnership and she was employed by the partnership. NF did not ask her to leave and she told him of the date she was leaving. She felt she knew NF long enough and would be able to agree a package.

**Respondent's case:**

The Tribunal heard evidence from one of the partners in the business. The claimant was the most experienced member of the administration staff. The claimant was not offered redundancy and it was only when they received the form T1A from the Tribunal that they realised she was making a claim for payment of redundancy. She spoke to witness and NF and said she was retiring and leaving the practice. Drinks were organised and an email was sent to the claimant on 27<sup>th</sup> February 2008 inviting her on the occasion of her retirement and she responded that she was looking forward to the drinks. He had not discussed the claimant's redundancy with NF.

In cross-examination witness stated that the claimant told him in January 2008 that she was leaving. NF indicated to him that the claimant wanted to leave. NF had considered leaving himself as his health was deteriorating. Witness was surprised to hear that the claimant was leaving. She said that her time was right and she had other things she wanted to do. The claimant's leaving was not discussed in any detail at the partnership meetings. There were seventy staff between their Waterford, Dublin and Polish offices and this included eight to ten administrative staff with the claimant being in this category. As of the date of hearing this case there were five administrative staff. Two were made redundant, one at Christmas 2008 and the other in September 2009. They both worked for NF. He disagreed that 75% to the claimant's time was spent doing work for NF. Making staff redundant was not discussed with NF as they had no intention of making anyone redundant in March 2008. Two other staff members who had a similar a length of service as the claimant were made redundant in April 2009. The claimant did not write a letter of resignation. He disagreed that at the time the claimant left that her role with the company was decreasing.

**Determination:**

Having considered the evidence the Tribunal is satisfied that there was no redundancy situation around March 2008 and the redundancy situation did not arise until some time later. The Tribunal finds that the claimant left the employment voluntarily and accordingly is not entitled to redundancy. The claim under the Redundancy Payments Acts, 1967 to 2007 is therefore dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

