

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE
MN1961/2009

RP2367/2009

against
EMPLOYER
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 O. Madden B.L.
Members: Mr P. Pierson
Mr G. Whyte

heard this appeal at Mullingar on 31st March 2010

Representation:

Appellant:

Mr Sean Nolan, Branch Organiser, Siptu Longford/Westmeath Branch,
Unit 16c Lough Sheever Corporate Pk, Robinstown, Mullingar, Co Westmeath

Respondent:

Mr Gary O'Mahoney, IR/HR Executive, IBEC, Confederation
House, 84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

At the outset the claim under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005 was withdrawn by the appellant.

Respondent's case

The respondent gave the appellant notice of termination of employment on 24/11/08 and dismissed her on 16/01/09. The dismissal was due to the appellant's prolonged absence from work due to an injury. This injury meant that the appellant was unable to carry out work of a physical nature and there was an element of this in her job as assembly worker. The respondent had no suitable alternative employment for the appellant.

At the time of the appellant's dismissal there was no redundancy situation within her particular job although there had been some redundancies within the company. Shortly after dismissing the

appellant the respondent placed other assembly workers on lay off and consequently a number of those workers sought and were paid redundancy lump sums. However those workers were subsequently replaced when the need arose.

Appellant's case

The appellant had asked the respondent to consider her for redundancy rather than dismissal. She had been on sick leave for two years and was unable to return to the position in which she was employed due to her inability to carry out such physical work.

Determination

Having considered the evidence presented to it the Tribunal is satisfied that a redundancy situation did not exist at the date of termination of the appellant's employment. Furthermore a case was not made under the Redundancy Payments acts, 1967 To 2007 by the appellant. It is not enough to merely challenge the employer's position and therefore this case is dismissed for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

