

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE  
MN1762/2009

RP1873/2009

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: Mr. P. O'Leary B L  
Members: Mr. M. Carr  
Mr. J. Moore

heard this appeal at Drogheda on 26th May 2010

Representation:

\_\_\_\_\_

Appellant:

The appellant in person.

Respondent:

The respondent in person.

The decision of the Tribunal was as follows:-

#### **Appellant's case**

In December 2008 the appellant was asked by his employer to take the entire month of January 2009 off without pay. The appellant did not want to do that so the respondent then put him on a two day week. This was only supposed to be for that month. However this arrangement has not changed and the appellant is still working on a two day a week basis.

On 19<sup>th</sup> February 2009 the appellant served an RP9 form on the respondent. There was no written reply to this form and the respondent stated on a number of occasions that he was taking advice on the matter. Some time between February and July 2009 the respondent told the appellant that it was "doable". The appellant was not sure what this meant and subsequently lodged a T1A form with the Employment Appeals Tribunal.

The appellant did not notify his employer either verbally or in writing that he was going to retire. He did not intend to retire from his job as he was unsure as to how much pension he would receive

from a pension scheme to which he subscribed. This pension scheme stipulated a date from which a pension would be paid but did not stipulate that he must retire from that date.

The appellant did not have a contract of employment. He remembered one being shown to him some considerable time after he had commenced employment but he did not sign it as he was unhappy with some of the content.

### **Respondent's case**

The respondent said that he knew the appellant was to retire in January 2009 and that he had a number of conversations with him during which the subject arose. There was no written notification in relation to the appellant's retirement.

There was a reduced requirement for a pastry chef (the appellant's job) which coincided with the retirement of the appellant and rather than offering a job on a two day a week basis to another person the respondent decided to offer this to the appellant. This offer was made on the presumption that the appellant had in fact retired. The appellant accepted this offer and continued to work on this basis. There was no break in his service.

The RP9 form was received by the respondent but he did not reply to this as there appeared to be some ambiguity within this form and he was confused about it. The respondent had no recollection of telling the appellant that it was "doable" and said that this was not a phrase he would use.

The respondent stated that it would appear that there was no written contract of employment for the appellant.

### **Determination**

The facts of this case were that the appellant served an RP9 form on 19<sup>th</sup> February 2009 following a period of short time working of at least four continuous weeks. Section 12 of the Redundancy Payments Act, 1967 sites the procedure to be followed by an employee who wishes to claim redundancy under this act.

As per subsection (1) and (2) of section 12

**12.**—(1) An employee shall not be entitled to redundancy payment by reason of having been laid off or kept on short-time unless he gives to his employer notice (in this Part referred to as a notice of intention to claim) in writing of his intention to claim redundancy payment in respect of lay-off or short-time.  
(2) An employee who has given a notice of intention to claim shall not be entitled to redundancy payment in pursuance of that notice unless within a period of one month from the date of that notice, or, where the matter has been referred to the Appeals Tribunal, within one month from the date of notification to the employee of the Tribunal's decision, he duly terminates his contract of employment by giving the notice required by that contract or, if no notice is so required, by giving to his employer not less than one week's notice in writing of the employee's intention to terminate that contract, and, before the service of the notice of intention to claim, either—

The appellant satisfied the procedure laid down in these subsections. The employer raised the question of the appellant's retirement and expressed an opinion that the appellant was going to retire on or about his birthday in January 2009. There was no documentary evidence produced to

support this by the employer and the appellant had no written contract of employment to which the Tribunal could be referred in support of this opinion.

The appellant's service with the respondent was unbroken up to the time of service of the RP9 form. Therefore the appellant did not retire.

In the circumstances the Tribunal must find that the appellant adhered to the requirements of the act and is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 To 2007.

By serving the RP9 on his employer the appellant is deemed to have voluntarily left his employment and is not entitled to succeed in his claim under the Minimum Notice And Terms Of Employment Acts, 1973 To 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

