

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP1057/2009

- appellant

against

Employer

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. T. O'Sullivan
Mr. J. Dorney

heard this appeal at Dublin on 12th February 2010

Representation:

Appellant :

Ms Bernadette Thornton, SIPTU, Contract Services Branch,
Liberty Hall, Dublin 1

Respondent :

Mr. John Barry, Management Support Services (Irl) Ltd, The
Courtyard, Hill Street, Dublin 1

The decision of the Tribunal was as follows:-

The appellant worked as a desk operator at the time of closure of the building where she had worked for thirteen years. When the building closed on 9th April 2009 she was put on protective notice and told she would be informed if suitable employment became available. The appellant was out sick two weeks after the contract ended and continued to

be sick as of the date of hearing this case. Her job no longer exists.

As far as the respondent was concerned the appellant was offered alternative employment, ten minutes away.

Respondent's case:

The Tribunal heard evidence from the Client Service Manager that the contract ended on 10th April 2009. The appellant was a desk operative who also did some light cleaning duties. Her duties included operating the car park gate for visitors, cleaning the rails at the entrance doors and checking the supply of toiletries. The building GH where the appellant worked was not very busy. The appellant was offered cleaning work at the AIB Centre at the same rate of pay. Her response was that she could not do the cleaning because of her knee. There had been a report of an incident/accident from two years previous, in 2006 where the appellant was out of work for one day.

In cross-examination witness stated that the appellant's son who worked in the car park was made redundant. In 1996 when the respondent needed somebody to work on the desk, the appellant applied and was successful. This job also had a cleaning element as part of the duties. Two days after the GH building closing the appellant was offered the cleaning job at the AIB Bank Centre. The offer was made as soon as possible after the other building closing.

Claimant's case:

In 1996 when the appellant started working with the respondent she was doing cleaning for the first three weeks and after that the client told her not to do any more cleaning. She spent thirteen years at the desk and did not do cleaning. She would not be fit enough for the cleaning work.

In cross-examination the appellant stated that while she never did cleaning she covered for her daughter where she checked the toiletries. She accepted that she received a job description some time after she started working for the respondent. Three different clients occupied the building at various times. She would not accept that cleaning was part of her duties. While she was told she would be allocated alternative employment she was not told she would be made redundant. She accepted she never told the respondent that she had a back problem.

Determination:

The appellant was a desk operative who also did some light cleaning duties. Her duties included operating the car park gate for visitors, cleaning the rails at the entrance doors and checking the supply of toiletries. The building GH where the appellant worked was not very busy. The appellant was offered cleaning work at the AIB Centre at the same rate of pay.

Generally if an employer makes a reasonable offer of alternative work, and the employee refuses it, the employee may lose his/her entitlement to a redundancy payment. Alternatives which involve a loss of status or worsening of the terms and conditions of an employees' employment would not be considered reasonable. Similarly, an employee may be justified in refusing an offer that involves travelling an unreasonable distance to work.

In the case before the Tribunal the respondent offered the appellant alternative employment ten minutes away from her original place of employment. While the appellant contented that the alternative work was quite different from her existing work she did not contest the respondent's evidence that the alternative work was only ten minutes away from her original place of employment.

The Tribunal determines that the appellant was offered suitable alternative employment just ten minutes away from her existing place of work. Her appeal therefore under the Redundancy Payments Acts 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)