

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee - appellant

CASE NO.
RP876/2009

against

Employer - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. P. Casey
Mr. J. Flavin

heard this appeal in Cork on 25 March 2010

Representation:

Appellant(s):
Ms. Brede Walsh, Citizens Information Centre,
18.1 Market Square, Mallow, Co. Cork

Respondent(s):
No attendance or representation

The decision of the Tribunal was as follows:-

The appellant commenced employment as bar worker and waitress with Co. A on 8 January 2004. On 2 December 2005 Co. A's business as well as members of staff including the appellant were transferred to the respondent. The appellant was absent from work from 12 June 2006 until the business closed on 20 August 2008 due to a fire on the premises. Her absence was due to a neck and shoulder problem, which she attributed to dragging barrels and lifting crates of beer at work. The appellant's evidence was supported by a letter from her doctor confirming her neck injury which, he stated, may be work related. Her evidence was also supported by a letter from a registered physical therapist who treated the appellant, for repetitive strain injury to her right shoulder, on 6 occasions over June and July 2006. The appellant's uncontroverted evidence is that she initially submitted weekly and later monthly medical certificates to the respondent until 20 August 2008.

While the respondent sent a completed P43 to Revenue indicating that the appellant's employment

had terminated on 15 June 2006 the respondent had not informed the appellant in the period from 12 June 2006 to the date of the closure of its business that her employment was being or had been terminated. Nor had the respondent issued the appellant with a P45 at any time from 12 June 2006 to the closure of its business on 20 August 2008. It is confirmed by copy documentation from Revenue, submitted to the Tribunal by the appellant, that Form P43 was completed by the respondent, at the request of Revenue, on some date after 18 March 2009. From that documentation it is clear that as of 18 March 2009 Revenue had not received Part 1 of any P45 issued to the appellant.

For the reasons set out above the Tribunal is satisfied that the appellant's employment had not been terminated by the respondent prior to the closure of its business on 20 August 2008.

By reason of the European Communities (Protection of Employees Rights on Transfer of Undertakings) Regulations 2003 which apply to the transfer of the business to the respondent on 2 December 2005 and furthermore by reason of paragraph 5 (a) (i) of Schedule 3 of the Redundancy Payments Act 1967 as substituted by Section 12 (a) of the Redundancy Payments Act 2003, the appellant had continuity of employment from 8 January 2004 until 20 August 2008.

Accordingly the Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

| | |
|----------------------|------------------|
| Date of Birth | 23 February 1957 |
| Employment commenced | 8 January 2004 |
| Employment ended | 20 August 2008 |
| Gross weekly pay | €216.00 |

but subject to a reduction in respect of non-reckonable service in respect of the above mentioned period of absence (12 June 2006 to 20 August 2008) calculated in accordance with paragraph 8 (a) or (b) of the said Schedule 3 as substituted by Section 12 (b) of the said Act of 2003.

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal wishes to point out to the appellant that even if she had indicated in her initiating form to the Tribunal (Form T1A) that she was making a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 that claim would have failed as the appellant was not available for work in the two weeks following the termination of her employment on 20 August 2008.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)