

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE
against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

CASE NO.

UD64/2010, RP108/2010
MN69/2010

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. M. Flood
Mr. S. O'Donnell

heard this claim at Dublin on 23rd August 2010

Representation:

Claimant : Mr. Brian Morgan, Morgan McManus, Solicitors, Law Chambers,
The Diamond, Clones, Co. Monaghan

Respondent : No representation listed

The determination of the Tribunal was as follows:

Since dismissal was in dispute in this case the claimant presented her case first.

Claimant's Case

The claimant commenced employment with the respondent in July 2006. As part of her role as a pharmaceutical engineer she generally worked on site with clients of the company. While she was aware of a decrease in business activity by early 2009 the claimant was aggrieved to hear the respondent inform her together with three other colleagues that they were being placed on a lay-off situation from 13 February 2009. At the time she had adequate work to perform and was based in the respondent's office undertaking that work. As part of that lay-off procedure her employer handed her a signed RP9 form.

In the belief that this lay-off situation was not completely genuine the claimant sought and obtained new employment elsewhere. That employment started on 9 March 2009. The claimant then signed her RP9 on 15 March and presented it to the respondent. By response she received a letter from one of the directors advising her she was not eligible for redundancy as she had voluntarily left her employment. The claimant told the Tribunal this was not the case as she only looked for alternative employment due to being laid –off by the respondent.

Respondent's Case

The respondent operates a business that supplies staff to its clients on their sites. Two of its directors met with the claimant on 6 February 2009 when they gave her notice of her lay-off. At that time the respondent had a number of staff located at various client sites throughout the country.

For various reasons it was neither company policy nor practice to replace a staff member with another equivalent employee at those sites.

In acknowledging the receipt of the claimant's completed RP9 form the respondent felt it was unnecessary to address it as it believed that since the claimant had commenced new employment elsewhere it was under no obligation to act on that form. Consequently neither a counter-notice issued nor a redundancy payment was made to the claimant.

Determination

Having considered the adduced evidence and supportive documentation the Tribunal finds that a redundancy situation existed in this case. The respondent's omission to give counter notice to the claimant, irrespective of her ongoing situation, implied that the respondent accepted a redundancy situation applied to the claimant at the time. In addition there was no persuasive evidence that the claimant had earlier voluntarily resigned her position with the respondent. The respondent incorrectly assumed that rather than checking and clarifying the situation with the claimant.

The appeal under the Redundancy Payments Acts, 1967 to 2007 is allowed and the appellant is awarded a statutory lump sum under those Acts and based on the following:

Date of Birth: 21 July 1980
Date of Commencement : 11 July 2006
Date of Termination: 15 March 2009
Gross Weekly Wage: €701.87

A weekly ceiling of €600.00 applies to statutory redundancy payments.

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

As stated in Part B of the RP9 form an employee who claims and receives a redundancy payment forfeits their entitlements for notice. Therefore the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Since a dismissal by way of redundancy is a fair dismissal it follows that the claim under the Unfair

Dismissals Acts, 1977 to 2007 also fails

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

