

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE -*appellant*

CASE NO.
RP531/2009
MN2000/2009

Against

EMPLOYER -*respondent*

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Letterkenny on 12th November 2009

Representation:

Appellant: XXXXXXXXXX

Respondent: C. S. Kelly & Co, Solicitors, Market House, Buncrana, Co.
Donegal

The decision of the Tribunal was as follows: -

The claim under the Redundancy Payments Acts, 1967 to 2007 was withdrawn at the outset.

Appellant's Case

The appellant's commenced employment in May 1985 with the previous owners of the respondent company. At the end of March 2008 the Gardai raided the premises and as a result the respondent lost their Liquor Licence and had to close. The appellant ceased working when the premises closed without receiving any notice of termination. She was not paid for after 7th April 2008. The rest of the staff were made redundant in August 2008.

The appellant made a claim under Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act 1997 directly to the Department of Enterprise, Trade and Employment against the respondent company which was then owned by the different owners

(MG). The appellant was advised to make a claim with the respondent's examiner, as the company had subsequently gone into examinership. The examiner would not hear the claim as the appellant had ceased employment before the rest of the staff. In March 2009 the appellant lodged a Payment of Wages claim with the Rights Commissioner but the claim was Statute Barred.

Respondents Case

The respondent company which was then owned by (MG) ceased trading in August 2008. A receiver was appointed on the 1st of August, discharged on the 26th of August and re-appointed on the 2nd of September 2008. The High Court appointed an Examiner on the 4th of September 2008.

The respondent company was bought by (TF) on the 1st of December 2008 free of all debts and liabilities and after all claims had been disposed off. The appellant never worked for TF.

Determination

The only claim that falls to be determined is that under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, (hereafter referred to as "the Act"), as the claim for redundancy was withdrawn by the claimant.

The Act puts no time limit on the referral of a claim for payment of minimum notice to the Tribunal, and therefore the Claimant was entirely entitled to bring this claim before the Tribunal. While the new owners of the respondent seem to have been assured that no claims were outstanding, such an assurance cannot defeat the claimant's statutory rights under the Act.

The claimant was dismissed without notice and neither the appointment of a receiver nor the appointment of an examiner operated to exclude or defeat her claim under the Act.

The Tribunal accepts the claimant's evidence that she commenced employment with the respondent in May, 1985 and awards the claimant the sum of €4,400.00 under the Act representing 8 weeks notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)