

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF
EMPLOYEE

– Appellant

CASE NO.
RP1023/2009
MN929/2009

against

EMPLOYER

– Respondent

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. E. Murray

Members: Mr. J. Browne
Mr. T. Kelly

heard this appeal on the 27th May 2010 in Clonmel

Representation:

Appellant: Mr. Pat O’Neill, 15, Albert Street, Clonmel, Co. Tipperary

Respondent In person

Appellant’s Case

The Appellant commenced employment with the Respondent, operators of a nursing home, in September 2003. On the 7th of January 2009 the Manager of the home instructed the Appellant not to leave until she spoke to her. She informed the Appellant that there were “empty beds” in the home and that they would have to let her go. The Respondent did not make any alternative suggestions (reducing her hours of work) to the Appellant. The Appellant understood that she was being let go effective from that day. The Appellant phoned the matron a few days later and was informed her name had been removed from the work roster. The Appellant requested her P45 for submission to Social Welfare and a letter outlining the situation for Social Welfare. The matron informed the Appellant that she did not need the letter but would organise her P45 for her. The Appellant spoke to the manager about her P45 and again there was no alternative options presented to her regarding her employment.

There was never any discussion concerning reduced hours on the 7th of January or during later conversations with the Respondent. The Appellant would have accepted reduced hours as the lack of employment had reduced her income from €460.00 per week to €220.00 from Social Welfare.

Respondent's Case

The manager of the Respondent requested that the Appellant come to her office after her shift on the 7th of January 2009. She informed the Appellant that due to the severe downturn in revenue she would have to reduce her hours. She instructed the Appellant to get the relevant forms from Social Welfare in order to declare the Appellant's new reduced working hours. The conversation lasted 15 minutes. Following that conversation the Appellant contacted the Manager regarding her P45, the Manager acknowledged that she did not mention the option of reduced hours during this conversation. She assumed that the Appellant wanted to resign as she requested her P45. The Appellant was paid for the following week after she left employment. There were three members of staff, with less service that she felt she would have been obliged to have made redundant before the Appellant.

The Matron of the Nursing Home was not aware that the Appellant was let go but was informed of this by the Appellant. The Matron was not in a position to comment on the possibility of reduced hours for the Appellant.

Determination

Having heard the evidence of the Manager of the Nursing Home and that of the Appellant, the Tribunal unanimously resolves the conflict of evidence in favour of the Appellant and finds that the Respondents did not adequately convey to the Appellant the position with regard to her employment and did nothing to remove the Appellant's belief that she was being made redundant. The Tribunal is further satisfied that a genuine redundancy had in fact arisen. Consequently, the Tribunal finds in favour of the Appellant in respect of the appeal under the Redundancy Payments Acts, 1967 to 2007 and awards the Appellant a Redundancy Lump sum based on the following criteria:

Date of birth	2 nd April 1985
Date employment commenced	15 th September 2003
Date employment ceased	7 th January 2009
Gross weekly pay	€214.00

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

The Tribunal finds that the Appellant was made redundant without notice and allows the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. The Tribunal awards the Appellant €428.00 under the provisions of this Act.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)