

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:  
EMPLOYEE            *-appellant*

CASE NO.  
RP1059/2009  
MN959/2009

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:    Ms. K.T. O'Mahony B.L.

Members:    Ms M. Sweeney  
               Mr J. Flavin

heard this appeal at Killarney on 16th June 2010

#### **Representation:**

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Appellant:    Mr. Donal Tobin, SIPTU, Conroy Hall, Park Road, Killarney, Co Kerry

Respondent:   Mr David O'Connor, David O'Connor Solicitors, High Street, Newmarket, Co. Cork

The decision of the Tribunal was as follows: -

#### **Summary of the Evidence**

The appellant commenced employment as a full-time shop assistant with the respondent on 16<sup>th</sup> July 2001. In June 2006 when the appellant returned to work following bereavement leave she was advised that her working week was reduced to a 3-day week. The appellant worked extra hours on top of this often bringing her total hours to around forty-hour week. The appellant informed the respondent that she would prefer to work a 5-day week. The other 2 days had been given to a student brought in to work for the summer. According to the claimant the respondent's manager, in or around 2007, brought in staff to do evenings. The manager denied this. The appellant went on sick leave in September 2008 and was due to return to work from sick leave in January 2009.

The appellant asserted that when she rang the respondent in January 2009 about returning to work he asked her to remain on certified sick leave as there was no work available. The appellant was

certified fit to return to work at the end of January 2009. When she contacted the respondent in February the manager informed her that there was still no work available and that he would contact her when work became available. The manager had no recollection of asking the appellant to continue on certified sick leave in January.

In March 2009 the respondent informed the claimant that work was available 6-9pm, 4 nights a week. The appellant was unwilling to work evenings and furthermore the twelve hours offered were insufficient. She had been working 25 hours a week prior to going on sick leave. The manager told her, "If you don't do them you'll do nothing". The appellant subsequently rang the respondent informing him she was entitled to work a 3-day week. His response was to ask her where she expected him to pull the hours from and he hung up.

The appellant served form RP9 dated 24<sup>th</sup> March 2009 claiming redundancy on the respondent. The respondent did not complete the counter notice but returned the RP9 form to the appellant with a letter stating that the RP9 was not 'relevant in the circumstances as work is available'. It was the respondent's case that the manager returned the RP9 to the appellant, as plenty of work would be coming up in the busy summer season. The appellant's representative wrote to the respondent on 31<sup>st</sup> March 2009, outlining the appellant's wish to return to her 3-day normal working week or that otherwise she would be pursuing a redundancy claim.

The appellant's appeal under the Redundancy Payments Acts was lodged with the Employment Appeals Tribunal on 29<sup>th</sup> April 2009. By letter dated 19<sup>th</sup> May 2009 the manager offered the appellant work from 12.00 – 3.00pm, 6 days a week. In a subsequent telephone conversation the appellant told the manager that she was not interested in these hours and confirmed this to him by letter dated 25<sup>th</sup> May 2009. The appellant's representative wrote to the respondent reiterating the request to have the appellant's normal working week being made available to her. There was no response to this letter or any further contact with the respondent.

According to the respondent's manager the appellant informed the respondent that she could only work a restricted number of hours in order to retain her Social Welfare benefit. The appellant's hours were irregular and she often worked nights in the 3 shops owned by the respondent. From the start she worked the hours that suited her. The respondent did not have an agreement with the appellant regarding not working nights. The claimant turned down two offers of employment made respectively in March 2009 and May 2009. The respondent returned the RP9 to the appellant, as he would have plenty of work coming up in the busy summer season over the months July, August and September.

## **Determination**

The claimant's refusal to accept the respondent's offer, made in March 2009, of twelve hours evening work per week, was not unreasonable.

On 24<sup>th</sup> March 2009, following a period of lay-off lasting more than four weeks the appellant served an RP9 notice of intention to claim redundancy on the respondent. The respondent did not, within seven days of receipt of that notice, offer the appellant at least 13 weeks of unbroken employment starting within four weeks of her notice to the respondent, such as to constitute a valid counter offer of employment as set out in s.13 of the Redundancy Payments Acts, 1967 to 2007. The offer of employment made by the respondent on 19<sup>th</sup> May 2009 did not constitute a counter offer of employment under the afore-mentioned subsection of the Acts.

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

Date of Birth:	10 <sup>th</sup> October 1958
Date of Commencement:	16 <sup>th</sup> July 2001
Date of Termination:	24 <sup>th</sup> March 2009
Gross Weekly Pay:	€317.19

The award is based on the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal finds that the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails as the appellant served the RP9 notice on the respondent claiming redundancy and terminating her own employment.

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)