

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
RP780/2009
MN733/2009

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. K. Buckley

Members: Mr. D. Hegarty
Mr. O. Wills

heard this case in Cork on 9 July 2010

Representation:

Appellant(s):

Mr Jan Jaroslaw Potocki, Polish English Translation,
"Pilawa", Office 19, 21-23 Oliver Plunkett Street, Cork

Respondent(s):

No legal representation

The decision of the Tribunal was as follows:-

The appellant sought redundancy and minimum notice awards on the grounds that her employment (working an average of thirty hours per week) with the respondent's hotel had ended on 11 January 2009 and that she received notice of dismissal on 13 January 2009.

The respondent set out a defence to the claims. On Friday 9 January 2009 the hotel's leisure centre manager (hereafter referred to as LM) met the appellant to inform her that, due to a reduction in business levels in the hotel, her hours of work could not be guaranteed for the foreseeable future (from Monday 12 January 2009). She was paid (on Friday 16 January 2009) for the week ending 11 January 2009.

On Tuesday 13 January 2009 the respondent's HR manager (hereafter referred to as HM) gave the appellant a letter "To Whom It May Concern" for Social Welfare indicating a temporary lay-off due to decreased business levels.

On 6 February 2009 LM, having called the appellant into the hotel, informed her that there was no change in business levels and that no hours of work were available to her. LM asked the appellant to contact HM in HR as she was willing to place the appellant on the accommodation attendant staff listing and that she could take up any work that might become available. The appellant did not make contact with HM regarding this. The appellant's nephew was in attendance at this meeting.

No claim for redundancy payment had been received from the appellant in relation to her position of part-time cleaning attendant in the hotel's health and leisure club. She continued to be an employee of the respondent and no P45 had been issued to her.

Determination:

The Tribunal finds that the appeal under the Redundancy Payments Acts, 1967 to 2007, succeeds. A redundancy situation existed in the circumstances of the evidence before the Tribunal. No written notice of lay-off was ever furnished to the appellant. Accordingly, Part B of a RP9 redundancy form (Notice of Intention to Claim Redundancy Lump Sum Payment in a Lay-off/ Short-time Situation) was not served by the appellant on the respondent. There was obviously some confusion in relation to the issue. The appellant is a non-national. The Tribunal felt that there was an additional onus on the respondent to properly notify the appellant of her lay-off. On that basis the Tribunal finds, under the Redundancy Payments Acts, 1967 to 2007, that the appellant is entitled to a redundancy lump sum based on the following details:

Date of birth:	26 October 1974
Date of commencement:	16 November 2006
Date of termination:	11 January 2009
Gross weekly pay:	€260.00

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

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails because the claim lodged with the Tribunal for minimum notice was not proved.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

