

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

- *appellant*

RP2674/2009  
MN2176/2009  
WT994/2009

against

EMPLOYER

- *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr D. Hegarty  
Ms. P. Doyle

heard this appeal at Cork on 28th July 2010.

#### Representation:

Appellant: In person

Respondent: Ms. Muireann McEnery, Peninsula Business Services (Ireland)Limited, Unit 3  
Ground Floor, Block S, East Point Business Park, Dublin 3

The decision of the Tribunal was as follows:-

#### **Respondent's Case**

At the commencement of the hearing the respondent's representative outlined to the Tribunal that the appellant's hours had been reduced on the 11<sup>th</sup> November 2008 from 40 hours to 20 hours a week. At no stage during November to the time of the appellant's leaving did he request to be reinstated to fulltime. The business was transferred on the 22 November 2009 and the appellant's position was still available.

JR who with her husband was the previous owner of the business gave direct sworn evidence. They took over the business in May 2006 after the death of her mother in law. In November 2008 they reduced the appellant's working hours to Monday, Wednesday and Thursday JR maintained

that the appellant was happy with this arrangement. The appellant had previously applied for redundancy in May 2006.

In 2009 they decided to try and lease the business as a going concern and their staff would transfer with this lease. MOH put in an offer that they accepted. Before signing anything she informed their employees including the appellant of the transfer and told them that their hours would remain the same. MOH also held a meeting with the employees but the appellant was not there for this as he had walked out of his job.

She produced in to evidence a letter dated 9<sup>th</sup> November 2009, which was sent to all employees explaining the circumstances around the transfer of business. Also produced was a letter to the appellant dated the 9<sup>th</sup> November 2009, this letter was seeking an explanation from the appellant as to why he had walked out of his job on the 6<sup>th</sup> November 2009 and in addition asking the appellant to confirm if he had resigned from his employment. The appellant replied by letter on the 10<sup>th</sup> November 2009 stating that he was taking a claim for redundancy and had been advised by NERA not to return to work while his claim was being processed.

Previously to his hours being cut the appellant was working 42 hours per week and with the reduction he was working Monday, Wednesday, Thursday and every second Saturday. At no time were they making the appellant's position redundant.

In reply to questions from the Tribunal she confirmed that the 20 hours a week were available for the appellant and that if he had requested full time hours they would not have been available. The day-time staff hours had been reduced.

MOH the new owner of the business gave direct sworn evidence. He took over the business on the 22 November 2009 as a going concern; one stipulation of the contract was that he would have to hold on to the existing employees. One chef opted out. He met with staff and informed them that they would now be working for him. To the best of his knowledge none of the staff received redundancy. He has never met the appellant. He could not recall if the appellant's name was on the list of staff members he received when he took over. When asked if the appellant's job had been replaced, he replied that they have three chefs, JB and his brother who works 19 hours a week and C who works part-time. At the time he took over JB worked on Fridays and Saturdays now he works Wednesday to Saturday inclusive. His brother is doing 19 hours a week and commenced employment three months ago while C started with him two months ago. Before his brother and C commenced he explained he was working 16 hour days from December 2009 to April 2010 but this ceased as he had suffered a heart attack.

### **Appellant's Case**

The appellant gave direct sworn evidence. He recalled when his hours were cut on the 11<sup>th</sup> November 2008 he was informed that business was not going too well and was asked would he work a four day week. He checked with social welfare and told JR he would work a three-day week, which was equivalent to 20 hours. He worked Monday, Wednesday and Thursday and on these days he maintained he was doing enough work for the next day, as there was no chef in when he was not there. He recalled a few months after being put on the short time he had told JR he was not happy. He also approached JR three months after being put on short time and asked her if there was any chance of redundancy, he asked JR again at later date and she told him he would have to ask GR. He maintained he did ask JR for redundancy or full-time work and she had informed him she could give him neither.

In around August GR informed him that he could not afford his redundancy, as he would have to sell a house. He eventually went to citizens advice in September on foot of this and informed his employers that after 13 weeks of short time they had to put him back on full-time or pay him his redundancy. They informed him they could not afford it. He got the form for redundancy and completed it and sent it GR by registered post. He produced two receipts for registered post dated 5<sup>th</sup> October 2009 and the 4<sup>th</sup> November 2009. The day after registering them he met GR and told him but GR said he did not accept registered post. The form was returned to him so he gave it to GR and GR told him he would sort it out.

The witness produced a handwritten copy of a letter that he sent to the respondent on the 4<sup>th</sup> November. In this letter he requested five days a week work from this date or if not he would claim for his redundancy. He finished work on the 6<sup>th</sup> November 2009 giving them one weeks notice.

When he received the letter from JR on the 9<sup>th</sup> November 2009 he went back to citizens advice and they printed his reply of the 10<sup>th</sup> November 2009 for him. He had given his notice in to the manager; at this stage he had his forms filled in for the Employment Appeals Tribunal, as he was not getting any feedback from GR. He told the manager he could not stay, as he was not getting full-time work or redundancy.

Under cross-examination he accepted that the manager did not have any decision-making role within the respondents. He had accepted the short time at the time but it was a lot of work for threedays. During this period he was receiving €170.00 from social welfare. The letter of the 4<sup>th</sup> November 2009 had been sent by registered post but had been returned. However as he knew thatthe RP50 form had been returned, his daughter also submitted this letter by hand to the manager. He did not go to work on the 10<sup>th</sup> November 2009 as advised by the citizen's advice. After he leftas far as he was aware some of the people working there were related to MOH.

It was put to him as to why he lodged the T1A and the letter simultaneously and why he did not wait for a response. He replied that he had received no response from the RP 50 he had sent. It was put to him that he had never submitted the RP 50 or the letter. He replied by saying he had waited so long to submit them as he had asked GR verbally and got no response so he eventually had to put it in writing.

In reply to questions from the Tribunal, he confirmed he was available for fulltime work while he was on reduced hours.

## **Determination**

The appeal under the Redundancy Payments Acts, 1973 to 2007 is allowed and the appellant is therefore awarded a statutory lump sum under those Acts and based on the following:

Date of Birth:	03 May 1948
Date of commencement	11 January 1968
Date of Termination:	06 November 2009
Gross Weekly Wage:	€422.40

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

The a ppeals under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the

Organisation of Working Time Act, 1997 were withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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