

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE
- appellant

CASE NO.

RP510/2009

against
EMPLOYER
- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Ms J. Winters
Ms M. Finnerty

heard this appeal at Navan on 27th January 2010
and 25th August 2010
and 17th December 2010

Representation:

Appellant(s) : In Person

Respondent(s) : In Person

Determination

The appellant had an accident, unconnected with work on 10 November 2006 and was absent from work for a period of about 17 months when her employment was terminated. She was still unfit for work at the time of the hearing.

The respondent said that they dismissed her because she was incapable of working. Apart from the issue of her fitness for work, it is also clear that the respondent was reducing activities in the hotel first of all by closing the restaurant and at different stages closing the bedrooms and leasing out the bar and the leisure centre facilities.

It is clear to the Tribunal that there were two factors bearing on the decision to dismiss. The

respondent's case was that she was dismissed because she was incapable of working, but there was an undoubted redundancy situation at the hotel. The appellant was a kitchen porter, and closing the restaurant would reduce the requirements for her services within the meaning of definition (b) as set out under section 7 (2) of the Redundancy Payments Acts.

The Tribunal is of the view that both factors led to her dismissal. Under the Act an employee is entitled to a redundancy payment if dismissed "wholly or mainly" to redundancy as defined. The Tribunal has to decide whether the main reason for her dismissal was the redundancy factor or the capability factor. The Tribunal has regard to the presumption of redundancy as set down by section 10 (b) of the amending Act of 1971 and find that she is entitled to a redundancy payment based on the following information:

Date of Birth:	5 December 1973
Date of commencement of employment:	10 November 2003
Date of termination of employment:	14 April 2008
Gross weekly pay:	€150.00
Amount of Redundancy Payment:	€1200.00

The appellant has a period of non-reckonable service (period of illness in excess of 26 weeks) from 10 May 2007 until 14 April 2008 and this has been taken into account in calculating the amount of her redundancy payment.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

