

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP2121/2009

against
EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr M. Murphy
Mr J. Flannery

heard this appeal at Navan on 18th November 2010

Representation:

Appellant: Ms. Lorraine Walsh, Citizens Information Service, 1 Brews Hill, Navan, Co Meath

Respondent: Liam Keane & Partners, Solicitors, The Old Toll House, Dunshaughlin, Co Meath

The decision of the Tribunal was as follows:-

Respondent's case

The respondent ran a crèche and employed 7 people. Due to the economic downturn the respondent had to make a number of temporary lay offs from 30th June 2009 to end of August 2009. The appellant was on holidays on 30th June and therefore the respondent waited until she returned to work and paid her to 2nd July 2009.

A text was sent to the appellant on 8th August 2009 asking her to call into the crèche in order to make plans for supplies etc. for the return to work. However the appellant told the respondent that she needed to work five days per week instead of the two she had previously been working since the birth of her second child but also asked if the respondent could guarantee at least thirteen continuous weeks employment on the same terms as previous to her lay off. The respondent informed her that she could still give her two days per week but it may not be the same two days as previously worked. The appellant then told the respondent that she was leaving and on the 13th August she presented the respondent with a form RP9 requesting payment of a redundancy lump sum. The RP9 was then completed by the respondent at section C stating that she would be in a position to offer the appellant thirteen weeks continuous work. This form was then posted back to the appellant. However when the appellant failed to return to work the respondent increased the

hours allocated to another employee who had also been previously employed for two days per week.

The respondent informed the Tribunal that the business was in the process of winding up since June 2010.

Appellant's case

The appellant was laid off from 30th June 2009 but was not informed of this until her return from holidays on 1st July 2009. Two weeks later she was offered some work for cash by the respondent but did not take this as she was in receipt of job seekers benefit. On 12th August the appellant handed a form RP9 to the respondent requesting a redundancy lump sum payment. The respondent was annoyed at this and said "you are not getting a penny from me". There was no offer of a return to work at that time and the respondent held onto the RP9. However this form was later returned to the appellant but she believed that the declaration in part C was not a genuine offer of employment and she heard nothing further from the respondent in relation to a return to work. The appellant was offered employment elsewhere in September 2009 and asked the respondent for a P45 but the respondent requested her to resign from 12th August 2009 before she would issue a P45 to her.

Determination

Having considered the evidence adduced the Tribunal determines that the offer of employment made in the form RP9 was not a genuine offer. In the circumstances the appellant is entitled to a redundancy payment and the Tribunal makes an award under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

DOB	6 th June 1981
Commencement Date	31 st August 2005
Date notice received	N/A
Termination date	2 nd July 2009
Gross pay	€225.00 per week

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

