

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.

RP801/2010
MN534/2010

against

EMPLOYEE - *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr S. Mahon

Members: Mr. W. O'Carroll
Ms H. Murphy

heard this appeal at Longford on 10th December 2010

Representation:

Appellant(s) : xxxxxx

Respondent(s) : Mr. Frank Crean BL instructed by T P Robinson, Solicitors, 94 Merrion Square
West, Dublin 2

Summary of Evidence

The appellant was employed by the respondent for over 20 years. A copy of the contract of employment was furnished to the Tribunal. Clause 3.3 of the Contract dictated that the Contract would "naturally expire upon the employees 65th birthday which is deemed by the employer to be the normal retirement date". The appellant's date of birth was the 20 February 1944 and she was therefore due to retire on 20 February 2009 in accordance with the terms and conditions of employment set out in the contract.

The business had been taken over by the respondent on or about the 27 February 2009. A meeting took place between the appellant and the respondent on the 15 March 2009. At this meeting the appellant was notified of the respondent's intention to terminate the appellant's employment because she had reached the normal retirement age as provided for in the contract. She continued to

work a number of weeks thereafter as she had been rostered to work. Discussions took place about holiday work/relief work. It was agreed by the parties that no discussion took place about continuous work. The work being envisaged was relief work. The appellant accepted that she did not take issue with this at the time but rather simply stipulated that if she was needed that she would require adequate notice. She accepted that she said at the time that it would give her more time to spend with her grandchildren.

It was agreed between the parties that the appellant had worked the rostered period. The respondent did not make contact with the appellant to do any holiday work or relief work.

By way of background an industrial dispute broke out between the respondent and certain of its employees which resulted in a picket being placed on the respondent's premises between 28 May 2009 and 7 November 2009. The appellant accepted that she occasionally visited friends on picket duty with tea and sandwiches and she also accepted that she was not on strike but that she would not pass the picket.

Determination

The Tribunal is of the view that the appellant was not dismissed by reason of redundancy in circumstances where the appellant's contract of employment had expired and the appellant had agreed to retire. Casual arrangement was entered into between the appellant and the respondent whereby the appellant agreed to work on a casual basis once given adequate notice. However, this agreement did not constitute an extension of the existing contract and did not entitle the appellant to call upon the respondent to make work available to her. In any event the appellant agreed that she would not pass the picket and in the circumstances was not available for work at the time of the strike.

In the circumstances the appellant's claim under the Redundancy Payments Act 1967 to 2007 fails.

The Tribunal is not satisfied that the appellant received her full entitlements under the Minimum Notice and Terms of Employment Act 1973 to 2005 and awards the appellant the sum of €2,106.00 being the equivalent of 3 weeks pay under the said Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

