

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

WT1061/2009

appellant

RP2903/2009

against

EMPLOYER
EMPLOYER
EMPLOYER

respondent

under

**ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr. L. Tobin
Mr. P. Woods

heard this appeal at Dublin on 28th October 2010
and 21st February 2011

Representation:

Appellant(s): Mr. Padraic Lyons BL instructed by
Mr Shane Healy, Healy O'Connor, Solicitors, Quay House,
Fitton Street, Off South Mall, Cork

Respondent(s): Ms Sinead Mullins IBEC, Confederation House, 84/86 Lower Baggot Street,
Dublin 2

The decision of the Tribunal was as follows:-

At the outset of the hearing on the 21st February 2011, the claim under the Organisation of Working Time Act 1997, was withdrawn.

Appellant's Case

The appellant told the Tribunal that she commenced employment with the respondent on 16 October 2006. She returned to Poland in January 2008. She contacted her employer and told him she was available for work. She returned from Poland in early August 2008. She worked for company AB and not company AH. She was transferred for a week to deputise for another employee but she undertook the same job. She received her P45 when she was absent on sick leave. She was dismissed on 1 October 2009 and received a letter on 6 October 2009. She received payment for holidays. No one mentioned anything to her about a redundancy.

In cross-examination she stated that she returned to Poland as her parents were ill. She told her employer that she would return to work in July 2008. All employees knew that she was returning to work. She had a guarantee of employment from K. When she returned to Poland her husband did not give up his job.

She did not receive a contract of employment.

Respondents Case

The GM of company AH told the Tribunal that she was employed in 2008 and K had left. In November 2008 due to a downturn in business housekeeping staff were restructured and one of the housekeepers was let go. She had a position in AH for the appellant and she informed her of this matter. An employee called Ms. K was not employed. LIFO was applied in redundancy cases. When the appellant returned from Poland she did not have enough hours to give her. The appellant did not have 104 weeks service with the respondent.

In cross-examination she stated that she managed all three premises, which the respondent had.

JK told the Tribunal that he was receptionist/manager for company AH for the past eighteen years. When the appellant left in 2008 to return to Poland to the best of his knowledge she returned on a permanent basis. The appellant returned from Poland in July/August 2008. There was no agreement with the appellant that she was guaranteed employment on her return.

Determination

The Tribunal carefully considered the evidence adduced by the parties. It is satisfied that the respective companies that provided two separate periods of employment to the appellant were each under the effective control and management of the same directors and were therefore not distinct and separate companies in terms of the employment granted as was claimed on behalf of the respondent.

The Tribunal is secondly and finally satisfied that the appellant effected a break in service between her employment with both companies and therefore voided any claim for a redundancy payment since she did not have continuous service with the same employer for 104 weeks this being the statutory period required. Therefore her appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

As the claim under the Organisation of Working Time Act, 1997 was withdrawn no award is being made under this Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

