

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

- *appellant*

CASE NO.

RP434/2010
MN198/2010

against
EMPLOYER

- *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: Ms B. Glynn

Members: Mr P. Pierson
Ms H. Henry

heard this appeal at Roscommon on 6th December 2010

Representation:

Appellant(s) : Ms. Brid Miller, Solicitor, Castle St, Roscommon

Respondent(s) : In person

Appellant's Case

The appellant gave direct evidence that she commenced working for the respondent company in June 2002. She was paid €330 per week and was responsible for telesales. Her place of work was at respondent's office premises. She continued working from that office until December 2008 when she was informed by (PD), director of the respondent company, that he was vacating the office premises. The appellant, along with her work colleague known as (P) were given the option of accepting an offer of redundancy or working from their own homes on a two day week basis. The appellant accepted the offer of working from home and was informed by (PD) that he would make her redundant in a couple of months. She was happy to accept this position and expected to be made redundant within a couple of months. The appellant's work colleague, (P), chose to be made redundant and was paid her redundancy entitlement by the respondent.

The appellant finished working for the respondent in August 2009 and sought her redundancy

payment from the respondent. From September 2009 until November 2009 she contacted the respondent on four separate occasions seeking her redundancy payment. She also sought her minimum notice entitlement but has received no payment to date. She denied that she was ever provided with terms and conditions of employment, but when shown a copy of terms and conditions, confirmed that the signature on same was hers. She was not given a payslip on a weekly basis but accepted that payslips were provided to her if she requested payslips. During her tenure of employment her wages were paid directly into her bank account. These payments ceased on 18 August 2009. She told the Tribunal that (PD) informed her that he could not financially afford to keep her in employment. She has not worked for any other employer since the termination of her employment in August 2009.

Respondent's Case

(PD) for the respondent gave evidence that the respondent company publishes magazines and books. In October 2008 he informed his two employees that he was vacating his office premises as the rent was too high. He offered both the opportunity to work from home. The appellant told him that she would be delighted to work from home and she remained working for the respondent from home on a two days per week basis from January 2009. Employee (P) informed him that she did not want to work from home and she was paid her redundancy entitlement. In August 2009 the appellant informed him that she wanted to take her redundancy. At that time the appellant informed him that she could obtain work on a five days per week basis elsewhere. He told the appellant that he would not stand in her way if that was what she wished to do. The appellant also informed him by way of e-mail that she was leaving her employment because she was only receiving two days work per week. Following consultation with his accountant he was informed that the appellant was not entitled to a redundancy payment. He met with her in August 2009 and conveyed that position to her. He stated that he posted the appellant's P45 to her but was unsure of the date. He gave further evidence that the appellant's position has not been filled. He advertised the position but could not find a suitable candidate in 2010.

Majority Decision

The Tribunal by majority decision with Ms. Henry dissenting dismisses the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005

The following is the dissenting opinion of Ms. H. Henry

I favoured the appellant's version of events. I believed the appellant to be a more credible witness. (PD) said towards the end of his direct evidence that he accepts that this is a redundancy situation. I believed the appellant's evidence that when she was offered two days working from home that it was understood that it was to give (PD) the opportunity to pay redundancy to the other staff member for which he said he was getting a loan, and that she would get hers at a later date.

(PD) had a folder with all the relevant information for the case including an advertisement which was put in a local newspaper for a telesales person in 2010 but claimed that he failed to get anyone – I find this incredible in the current climate and am inclined to believe that this was done on the advice of his accountant.

(PD) claimed to have sent the appellant her P45 and P60 – she claimed she had never received same and he could not produce any copies despite having a file with all other information. He also

claimed that the appellant sent him an e-mail claiming that she had got work for 5 days elsewhere but again had no evidence of this e-mail – which again the appellant denied.

Before the appellant finished working (PD) requested to take back the accounts work that she was doing and said that he would do them himself according to the appellant. (PD) never employed anyone since to do the appellant's job and I, therefore, believe the job no longer exists.

Determination

It is clear from the evidence furnished that when the respondent's company fell into financial difficulties and had to vacate his office premises, the respondent spoke to his two employees and gave them a choice of taking redundancy or working from home. This was in December 2008. One of the employees opted for redundancy while the second employee, the appellant, opted to work from home. While there is a conflict of evidence between the appellant and the respondent as to whether this work was on a temporary basis or on a permanent basis, what is clear is that both parties were under the impression that the appellant was at liberty, and had the option to seek redundancy at any point, if she elected to do so. It is further clear from the evidence given that neither party sought advices from either an accountant or solicitor in respect of this matter.

In August 2009 the appellant wrote to the respondent, via e-mail, terminating her employment with him, as she wished to seek work on a full-time basis. She sought her redundancy package. The respondent then contacted his accountant to "implement" the appellant's redundancy package only to be informed that this was not now available as the appellant had handed in her notice. Prior to advertising for a replacement for the appellant, the respondent wrote to the appellant informing her of his intentions, to allow the appellant an opportunity to resume her position with the respondent. The respondent received no reply to this letter and it is clear from the evidence that the appellant terminated her employment with the respondent in her e-mail in August 2009.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

