

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *appellant*

RP2935/2009

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr. D. Morrison
Mr M. McGarry

heard this appeal at Castlebar on 4th February 2011

Representation:

Appellant(s) : Mr. Stephen Lydon, Tuohy & Company, Solicitors, Unit 2,
Earls Mews, Lord Edward Street, Ballina, Co Mayo

Respondent(s) : Benen Fahy Associates, Solicitors, 2 Bridge Street, Galway

Appellant's Case

The appellant gave direct evidence that she commenced working for the respondent on 18 September 2006. The respondent traded as a childrens clothes shop. Her employment was uneventful until 23 February 2009 when she was given a letter by (SW) for the respondent which stated that her employment would be ceasing on 28 March 2009. However the business did not close down on 28 March 2009 as the respondent tried to keep the business open. The appellant remained in employment beyond 28 March 2009 and, on 25 June 2009 received a text message from (SW) stating that the business would be closing down. She had further discussions with (SW) about the closure of the business and received a further text message on 17 August 2009 stating that the business would be closing on 29 August 2009. She remained in employment until that date when the business closed down.

During the discussions about the closure of the business she was considering travelling to Australia. She enjoyed a good working relationship with (SW) who encouraged her to go to Australia. She made definite plans to go to Australia when (SW) told her that the business would be closing in

August 2009 which it did. She went to Australia in September 2009 following the closure of the business and returned in March 2010. She never expressed an intention to resign from her employment.

Respondent's Case

(SW) for the respondent gave evidence that she commenced trading in September 2006. She had a good working relationship with the appellant. The business experienced tough times around January/February 2009 as business was very quiet. She consulted with her family and decided to close the business in March 2009. However she later changed that decision and decided to continue in business. The business continued to trade but in June 2009 she informed the appellant that the business would be closing down. The appellant had previously told her that she was going to Australia and she encouraged her to do so. A closing down sale commenced in July 2009. The closure of the business coincided with the appellant's impending departure to Australia. The business closed down on 29 August 2009.

She accepted that she discussed the closure of the business with the appellant on more than two occasions. She did not give the appellant written notice that the business would be closing down on 29 August 2009. She told the Tribunal that there was a direct correlation between the appellant's departure to Australia and the closure of the business. She confirmed that the business would not have remained open if the appellant had not gone to Australia.

Determination

The Tribunal considered the evidence of both parties and is satisfied that the appellant was dismissed by reason of redundancy. Accordingly the Tribunal awards the appellant a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information.

Date of Birth:	18 January 1987
Date of commencement of employment:	18 September 2006
Date of termination of employment:	29 August 2009
Gross weekly pay:	€350.00

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)

