

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

EMPLOYEE - appellant

### CASE NO.

RP40/10

### Against

EMPLOYER - respondent 1

EMPLOYER - respondent 2

### under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr T. O'Grady  
Ms. E. Brezina

heard this appeal at Naas on 16th March 2011.

### Representation:

Appellant: Ms Karen O'Brien BL, instructed by Matthew Byrne, Burns Nowlan, Solicitors, 31 Main Street, Newbridge, Co Kildare

Respondent : Mr. Vincent Nolan BL, instructed by Osbornes, Solicitors, Town Centre House, Naas, Co Kildare

The decision of the Tribunal was as follows:-

### Appellant's Case:

The appellant commenced employment on 28<sup>th</sup> February 2000 with the first named respondent and was employed as a receptionist. She also did some work for the second named respondent. She understood that both respondents were one single entity as they had common directors.

Some five years later the appellant's manager encouraged her to apply for a position of letting agent with the second named respondent. She subsequently approached C. McE (also known as J. McE) and asked him if he would consider giving her the job. C. McE said he would be very happy to employ her. She enquired if she should have continuity of service and C. McE told her there would be no break in her service. She was offered that position. When she received her P45 in April 2005 she understood this to be a formality.

She continued to work from the same desk. She worked alongside the new receptionist who now worked for the first named respondent. At busy times she answered the phones for the first named respondent. Ultimately, her salary was halved and she was put on commission. On many occasions she had to chase up on her commission entitlement.

In August 2009 C.McE informed her that he was going to make her redundant. She told him that she was entitled to a redundancy payment for almost ten years of her employment. C. McE said he did not know about her entitlement for all those years. She believed both the first named and second named respondents were sister companies. The appellant was furnished with a redundancy cheque in respect of her employment for the years 2005 to 2009. She told her manager that she was going to pursue the remainder of the redundancy payment owed to her.

### **Respondent's Case:**

The first named respondent was engaged in the sale of residential and commercial properties and commercial lettings and the second named respondent incorporated in 1993 specialised in residential lettings. J. McE set up the second named respondent company. That company carried on business in the same premises as the first named respondent. J. McE owned the premises and the first named and second named respondents leased the premises from him. The first named respondent company employed JMCE in 1989.

In 2005 a position of letting agent/negotiator became vacant in the second named respondent company. The appellant approached J. McE about that position. He had known the appellant for five years and felt she had the confidence to take on and deal with that position. At that time the appellant said she was unhappy with her receptionist role in the first named respondent company and wanted to move on. He described the role and its challenges and that she would have to work after hours. He made it quite clear to the appellant that this was a new role for her. A contract was drawn up with a commencement date of 1<sup>st</sup> March 2005.

Both the first named respondent and the second named respondent were two separate companies run independently of each other. The companies traded from the same premises.

J. McE could not recollect if the first named respondent company continued to pay the appellant's pension contributions for some time while she worked for the second named respondent company.

### **Determination:**

The Tribunal very carefully considered the evidence adduced at this hearing.

On the evidence before the Tribunal, it is clear that the appellant was given a P45 in 2005 by the first named respondent, was given a new role and title and she received her salary from that time on a different basis, was given a new contract of employment, dealt with for the most part different work and was paid an increased amount.

The employers were in fact and in law different, and in those circumstances there is no entitlement under the Redundancy Payments Act 1967 as amended to a redundancy payment that encompasses the length of service of both employers. The appellant voluntarily left the employment of the first named respondent, and has already been paid her statutory entitlements in relation to her employment with the second named respondent.

The appeal therefore fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

