

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD2425/2009, RP2780/2009
MN2241/2009

against

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B L

Members: Mr M. Noone
Mr A. Butler

heard this claim at Wicklow on 25th March 2011

Representation:

Claimant : Garrett Fitzpatrick, Solicitors, 1A McDermott Street, Gorey, Co Wexford

Respondent : Mr Martin Collins B L instructed by
Tarrant & Tarrant, Solicitors, Law Chambers, Arklow, Co Wicklow

The determination of the Tribunal was as follows:

Preliminary Determination (*Unfair Dismissals Acts only*)

The Tribunal find that the claim under the Unfair Dismissals Acts, 1967 to 2007 is statute barred and as a result the Tribunal do not have jurisdiction to hear the matter. In coming to that conclusion the Tribunal considered the arguments made by both the claimant and the respondent and the case of Byrne versus Quigley that was opened to the Tribunal. The test to be applied is a two-tiered one. The Tribunal have to be satisfied that exceptional circumstances existed and if so must be further satisfied that those exceptional circumstances were such as to prevent the claimant lodging her claim within the statutory time period of six months. The claimant argued that she was of the belief that she had been made redundant and that was why she did not lodge her claim within six months of her cessation of employment. When asked what steps the claimant took in an attempt to secure her redundancy payment the Tribunal were informed that there was no correspondence in existence between the claimant and the respondent. There were some phone calls allegedly made by the claimant.

The Tribunal find it incredible that if the claimant genuinely believed she had been made redundant

she made no real effort to secure her payment. Even if that situation did exist, it would not amount to an exceptional circumstance such as to prevent her lodging her claim within the statutory time period.

Evidence was given by the company that another staff member took over the claimant's role when her employment ended. That person previously worked part time, three days a week. The evidence of the claimant corroborated this. The claimant stated that she was not aware she was entitled to redundancy until her accountant told her she had the requisite service. His opinion on the redundancy was purely based on that service and not on the circumstances that existed within the respondent company. At the time of the termination itself neither the claimant nor her husband had addressed their minds to the possibility of a redundancy. That belief developed some time later.

Determination

The Tribunal heard conflicting evidence over the circumstances and background surrounding the appellant's cessation of employment. Based on that evidence the Tribunal finds that the termination of the claimant's employment with the respondent was due to other factors other than a redundancy situation. The appeal under the Redundancy Payments Acts, 1967 to 2007 therefore fails.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is allowed and the Tribunal awards €600.00 to the appellant as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

