

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE

RP2396/2009

WT900/2009

MN1977/2009

Against

1. EMPLOYER

2. EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. S. McNally
Members: Mr. P. Casey
Mr. O. Wills

heard this appeal at Cork on 29th November 2010

Representation:

Appellant:

P.J. O' Driscoll & Sons, Solicitors, 41 South Main Street, Bandon, Co. Cork.

Respondent:

In person

The decision of the Tribunal was as follows:-

Appellant's case

The appellant stated that she received a phone call from the respondent on 31st December 2008 sometime between 9:30pm and 10:00pm. The respondent wished the appellant a happy new year

and told her that her P45 was in the post. There was no elaboration on why the P45 was in the post. In January the appellant was asked to call to the respondent in order to sign an RP50 form. The appellant acknowledged that she herself had requested that the respondent complete this form. The appellant signed the RP50 at the relevant section and left it with the respondent. Subsequently the appellant rang NERA to enquire about the progress of her claim for redundancy and was told that they had not received the RP50. She then rang the respondent on 5th June 2009 and was told “it is being sorted”.

The appellant had been in receipt of job seekers allowance on the basis that she was working part time. However she had not in fact worked for the respondent at all since June 2008 and prior to that she was working on a short time basis. In June 2008 the Social Welfare Officer told the appellant that she must obtain a P45 from her employer.

The appellant stated that she had not been in receipt of sickness benefit and denied, when it was put to her, that she told the respondent that she was unable to work due to illness.

Respondent's case

The respondent stated that the appellant was absent from work for six months in 2006 subsequent to undergoing surgery and was fully paid for this period. On returning to work the appellant was promoted to supervisor of cleaners and also given some receptionist duties. The appellant was also given a pay rise.

This did not work out and in or around April 2007 the appellant went on “yellow dockets” and was paid for the days she was able to work. At the end of 2007 the appellant went back on the part time scale due to her health.

According to the respondent the appellant had requested a P45 sometime before 31st December 2008. The respondent normally completes all P60's during the Christmas break and would have completed the P45 for the appellant at that time and that is why she phoned the appellant on 31st December to let her know that the P45 was in the post.

The respondent said that they needed the appellant as she could use the computer and knew the reservations system and there was no reason to let her go and that she would still be employed there had she so wished.

It was denied by the respondent, when it was put to her, that the appellant was let go. In response to being asked why she called the appellant down to sign the form RP50 the respondent said that the appellant came down looking for redundancy and that she (the respondent) was in a hurry, downloaded the form and gave it to the appellant to sign. However when the respondent subsequently considered the matter she decided to shred the form as she “did not want to be part of something incorrect”.

The respondent was asked had she indicated that she was going to sign the form RP50 and replied, “no. I looked at it and said, oh Jesus and would not sign it. I thought the state was going to pay all of it”. When asked did that change her opinion the respondent said probably.

Determination

Having considered the evidence adduced the Tribunal finds no evidence to support the claim that the respondent terminated the employment of the appellant by way of redundancy or otherwise. The Tribunal is satisfied that the appellant left of her own volition and therefore the claim under the redundancy Payments Acts, 1967 to 2007 fails.

In considering the appellant's application to expand her appeal to include a claim under the Unfair Dismissals Acts, 1977 to 2007 the Tribunal finds that such an expansion is irrelevant.

As the appellant left of her own volition there is no requirement on the respondent to pay notice and therefore the appeal under the Minimum Notice And Terms Of Employment Acts, 1973 to 2005 fails.

The claim under the Organisation of Working Time Act, 1997 was withdrawn by the appellant.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

