EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:	CASE NOS.
EMPLOYEE - *appellant*	RP2539/2009
	WT946/2009

against

EMPLOYER – *Respondent 1*

EMPLOYER – *Respondent 2*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. P. Mc Grath BL

Members: Mr. B. Kealy
Mr. F. Barry

heard this appeal at Dublin on 29th July and 17th December 2010

Representation:

Appellant: In Person

Respondents:

Respondent 1: In person, on first day only
Respondent 2: Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1 on second day only

The decision of the Tribunal was as follows:-

The appeal under the Organisation of Working Time Act 1997 was withdrawn.

The appellant told the Tribunal that she had worked part time at the same place for 11 years. At first she worked for Respondent 1 but when they lost the contract she transferred to Respondent 2. She continued working for Respondent 2 until they lost the contract. When she ceased working she requested a redundancy payment but Respondent 2 said that as she had worked for them for only 1 year she was not due any payment.

The Tribunal adjourned the hearing so that Respondent 2 could be named as a respondent and put on notice of the resumed hearing.

On the second day of hearing the representative for the 2nd named respondent explained that they took over the contract from respondent 1 in December 2007, so therefore they took over the appellant's employment under a transfer of undertaking. The appellant was working in Hatch Street at this time. This contract was due to expire in November 2008 but their client kept extending this contract it eventually expired in April 2009. The appellant employment ended on the26th April 2009. When this contract ceased the appellant was offered alternative employment lessthan 1 kilometre away with the same hours and pay. The appellant indicated she did not want tomove to this location. They had offered the appellant a reasonable alternative so redundancy wasnot applicable in this case.

An area co-ordinator gave direct sworn evidence. She was the direct supervisor of the appellant, the appellant was aware that the contract was ceasing. She had informed the appellant that the contract was finishing and that they could offer alternative employment less than one kilometre away. This location was the nearest they could offer at the time. The appellant told her that this new location was too far.
The appellant put it to this witness that if she had taken up this position in the new location that her day would be longer as she still had one shift to cover for respondent 1. The witness explained that they had only discussed location, not times but they would have accommodated her.

Determination

The Tribunal has carefully listened to the evidence adduced.

The claimant makes the case that her cleaning job in Hatch Street was made redundant when her employer lost the contract in that premises. The claimant had worked in these premises for eleven years.

The respondent argues that it offered the claimant alternative employment doing the same type of work in a new location not more that 1 kilometre distance from the Hatch Street premises.

The Tribunal must consider the reasonableness of the parties in their actions. To their credit, the respondent accepted that they took the appellant on in the context of a transfer of undertaking and her service of eleven years was unbroken.

The appellant explained that she had always worked in Hatch Street and that an alternative venue no matter what location was not acceptable to her. After eleven years in one job on one premises she expected her employer to make her redundant and sever the relationship between them.

The company pointed to the reasonableness of their expectations insofar as the appellant was being offered similar alternative employment.

No contract of employment was put into evidence and the terms and conditions of the employee's work or what they were understood to be were not clear.

Clearly, the Respondent 2 had an opportunity when taking over the particular cleaning contract and the services of the appellant, to re-new contracts of employment. This they did not do.

The significance of this lies in the fact that ordinarily in employment of the type that the respondent was involved in, employees would be aware of the fact that they might be required to demonstrate

flexibility including being moved from site to site. This would be clearly stated in a contract of employment.

It is clear that the claimant did not believe that she was required to move to another site in the event that the cleaning services contract at Hatch Street was terminated. As she had worked here for ten years she believed this and no other job was her job and at age 55 she should be entitled to believe this.

No evidence was adduced to demonstrate that there was an obligation on the appellant to move from site to site as and where the work took her. As far as she was concerned her job was made redundant and in this regard and in these narrow set of circumstances the Tribunal agrees. The appellant is entitled to succeed under the Redundancy Payments Acts 1967 to 2007 and accordingly the Tribunal award the appellant a redundancy lump sum based on the following information:

Date of Birth:	08 August 1955
Date of Commencement:	15 April 1998
Date of Termination:	28 August 2009
Gross Weekly Pay:	€47.50

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)