

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE *-appellant A*
EMPLOYEE *-appellant B*

CASE NO.
RP1033/2010
RP1034/2010

against

EMPLOYER

Under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Ms M. Sweeney
Mr O. Wills

heard this appeal at Clonakilty on 10th January 2011

Representation:

Appellants : Ms. Laetitia M. Baker, Maccarthy Baker & Co, Solicitors,
64 North Street, Skibbereen, Co. Cork

Respondent : Mr. Rory O'Callaghan, O'Mahony Farrelly O'Callaghan,
Solicitors, Wolfe Tone Square, Bantry, Co Cork

The decision of the Tribunal was as follows:

Summary of the Evidence

The respondents, a husband (OH) and wife (OW), own a grocery shop and operate a small post office in the same premises. The shop is open seven days a week and the post office is open Mondays to Saturdays, with the latter being a half-day. OH is employed elsewhere but looks after the administrative side of the business. In late 2009 the respondent had five employees, including the two appellants. It was common case that there was a downturn in the business and that OH had met with the staff in or around mid-October 2009 to discuss rescheduling their hours of work. It was OH's evidence that he informed both appellants that the only hours of work available were in the shop on Saturdays and Sundays or as an alternative they could be redeployed to the post office during the week and if they opted for the latter he would retrain them.

Appellant A's evidence was that when she commenced employment with the respondents, in or around 19 January 2004, she had worked in both the shop and post office but in later years her duties were confined to the shop. She also worked in a bar at weekends. It was her evidence

that in her discussions with OH in late 2009 she indicated to him that she was interested in working in the post office and he told her that his wife (OW) would be in contact with her. OW prepares the rosters. Appellant A did not hear any further about work in the post office and from early November 2009 she was only rostered to work two hours per week in the shop on Sundays. Prior to the reduction in her hours in November 2009 her hours of work for the respondent varied from between 20 to 29 hours per week. The reduction to two hours per week was not viable for her. She served an RP9 form dated 17 February 2010 on the respondents. The appellant maintained that it was back in 2004 that she had indicated that she did not wish to work on Saturdays; she was adamant that OH had not raised the issue of working on Saturdays with her in their discussions in late 2009.

It was OH's position that appellant A had indicated at their meeting in late 2009 that she had no interest in taking up work in the post office and while she did not want to work on Saturdays she would do Sundays in the shop. In OH's letter of response dated 24 February 2010 to appellant A he contested her redundancy claim on those grounds.

Appellant B commenced employment with the respondent in the autumn of 2004. As well as working on a part time basis for the respondent she ran her own B & B business some seasons but had ceased doing it for a number of years. In November 2009 her hours were reduced and she was only rostered to work three hours per week. Prior to that she did about 20 hours work per week, including hours on Saturdays, in the shop. Shortly after the reduction in her hours she asked OH if she could have an additional hour's work to enable her to get a social welfare stamp and he promised that his wife would get back to her about it but she never heard further about it. She had not been offered work on Saturdays or work in the post office. Following advice she served an RP9 form dated 17 February 2010 on the respondents.

It was OH's position that appellant B had indicated at their meeting in late 2009 that she would do hours on Sunday but did not want to work on Saturdays or be redeployed to the post office as she was not capable of working there. In his letter of response dated 24 February to the appellant OH contested her redundancy claim on those grounds. OW confirmed that appellant B told her, when she was preparing the rosters, that she only wanted hours on Sundays and that appellant A did not want to work on Saturdays because of her bar work. OW's evidence was that she did not have any discussions with either appellant about post office work. Another employee approached OW and told her that OH had mentioned the work in the post office and that she was interested in it. Both appellants failed to report for work on Sunday, 28 February 2010.

Determination

The appellants had been working in the respondents' shop during the week and in the case of appellant B this included work on Saturdays. There was a decline in the business in the shop and the respondents decided that during the week the person working in the post office would also look after the shop. The Tribunal, on the balance of probability, accepts the appellants' account of what transpired at the meeting(s) in late 2009 and that from early November 2009 the appellants' hours had been reduced to two hours in the case of appellant A and three in the case of appellant B and in both cases those hours were rescheduled to Sundays. The Tribunal is satisfied that the reduction in the appellants' hours of work brought them within the short-time provisions of the Redundancy Payment Acts (s. 11 of the 1967 Act as amended). Both appellants served RP9s dated 17 February 2010 on the respondents. As OH's letters of 24 February 2010 to both appellants did not constitute a counter offer within the meaning of the Acts the Tribunal determines that the appellants are entitled to a redundancy payment. These payments are based on the weekly hours

worked before the reduction was made.

In the case of appellant A the redundancy payment is based on the following criteria:

Date of Birth:	19 September 1968
Employment commenced:	19 January 2004
Employment ended:	24 February 2010
Gross weekly pay	€295.00

In the case of appellant B the redundancy payment is based on the following criteria:

Date of Birth:	15 September 1954
Employment commenced:	01 September 2002
Employment ended:	24 February 2010
Gross weekly pay	€295.00

These awards are based on the appellants having been in insurable employment during the relevant period under the Social Welfare Acts.

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sad.) _____
(CHAIRMAN)

