

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE –*Appellant*

CASE NO.
RP1399/2010
WT420/2010

against
EMPLOYER –*Respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire B.L.
Members: Mr T. O'Sullivan
Mr J. Maher

heard this appeal at Dublin on 9th February 2011

Representation:

Appellant: In Person

Respondent: Mr Tony Merriman, 42 Gallymore Rd, Drimnagh, Dublin 12

The decision of the Tribunal was as follows:

The respondent's representative was granted leave to represent the respondent under Regulation 12 of S.I. 24 of 1968.

Preliminary Issue:

The respondent operates a childcare facility and the appellant was employed there since March 2007. It was agreed between the parties that the appellant's employment had terminated by reason of redundancy on 5 March 2010. The dispute between the parties arose in relation to whether or not the appellant possessed the requisite continuous service to qualify for a redundancy payment.

Respondent's Case:

It was the respondent's case that the appellant had tendered her resignation by letter dated 22 September 2008. The respondent employed a new person to fill the appellant's role of supervisor. The appellant provided the respondent with two weeks' notice and was training the new member of staff during this time. However, during the second week of her notice she asked the respondent for her job back. The respondent agreed that the appellant could return to her employment but on a shorter working week. The appellant thus recommenced her employment in a lesser role.

It was the respondent's case that the appellant had broken her service and therefore did not have the requisite 104 weeks' continuous service to qualify for a redundancy payment.

Appellant's Case:

The appellant confirmed submitting her resignation by letter dated 22 September 2008. However, while working her second notice week it was agreed with the respondent that the appellant would continue in her employment. It was therefore the appellant's case that she did not break her service.

Determination on Preliminary Issue:

The Tribunal considered the issues put forward by both parties. It was satisfied that while it was the appellant's intention to break her service, this did not in fact actually occur, as the appellant continued uninterrupted in her employment. The Tribunal was satisfied that it had jurisdiction to hear the appeal under the Redundancy Payments Acts, 1967 2007, the appellant having the requisite 104 weeks' continuous service for bringing an appeal under these Acts.

Substantive Issue:

The respondent gave evidence that some weeks after the events in September 2008 the appellant informed the respondent that she about to commence treatment. The appellant was subsequently absent on sick leave until her return to work on 22 February 2009. When the appellant returned from sick leave she told the respondent that she like to work a few hours a week and be provided with lighter duties. With the appellant's permission, the respondent contacted the appellant's doctor and identified duties that she hoped would be suitable. The appellant worked twenty-six hours over a period of two weeks but she was then absent on sick leave from 23 March 2009 until her maternity leave commenced on 29 June 2009.

The respondent's business saw a decrease during 2008. At its height the facility was responsible for up to thirty-five children but this reduced to just four children with the remaining staff sharing the remaining hours between them.

In early December 2009 the respondent completed the staff rota. The appellant subsequently telephoned her in late December 2009 informing the respondent that she would be returning from maternity leave. The respondent told the appellant that the rota had been completed but she told the appellant that she could have five hours work until she spoke to the other employees about her return and until the rota could be re-organised.

In reply to questions from the Tribunal, the respondent stated that the appellant had not returned to her normal hours prior to maternity leave because the rota had to be re-structured and also a new person was employed as a supervisor. The appellant had agreed with this.

The appellant gave evidence that she worked full-time up until the time of her treatment but she was then absent for a period of three months. When she returned from sick leave she did agree to part-time hours but she hoped to receive her full-time hours again in due course. However, the respondent told her that only part-time hours were available. The appellant confirmed she was again absent on sick leave up until the commencement of her maternity leave.

When the appellant was returning from maternity leave she gave the respondent two weeks' notice of her return to work. The appellant was allocated five hours work by the respondent. The appellant had hoped for twenty hours per week but the most she received were ten hours. The respondent then made the appellant redundant. The appellant stated that she was aware that the

respondent's business had decreased but she did not think that her hours would reduce to just five hours per week. She was ready and available to work full-time when she returned. To the best of her knowledge other employees did not have their hours reduced as much as she had. When the appellant returned from maternity leave there were six employees working there and they were each working about 15-20 hours each per week and some of those were actually employed on a part-time basis. The appellant confirmed seeking full-time hours when she returned.

In relation to the claim under the Organisation of Working Time Act, 1997 the appellant stated that holidays were paid to her based on 15 hours per week.

Determination:

It is clear from the evidence, and agreed by both parties, that a redundancy situation existed in relation to the termination of the appellant's employment.

The Tribunal accepts the appellant's evidence that she was ready and willing to work full-time hours and it was the respondent's evidence that she made attempts to secure the appellant further hours. This being the case the reduced hours cannot be deemed as having been accepted in full by the appellant. Accordingly, the Tribunal awards the appellant a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	14 February 1973
Date of Commencement:	12 March 2007
Date of Termination:	5 March 2010
Gross Weekly Pay:	€342.67

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal also finds that the appellant is entitled to five additional public holidays and two weeks holiday pay from the leave year 2009, which was accrued while she was on sick leave or maternity leave. This amounts to €1,028.01.

Additionally, the Claimant was underpaid for the two weeks leave and four public holidays she was credited with in the leave year 2010 on leaving her employment. These should have been calculated at the rate of €342.67 per week, rather than €165. This is an amount of €497.48.

The total amount due for outstanding holiday pay under the Organisation of Working Time Act, 1997 is therefore €1,525.49.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)