

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP1560/2010

against
EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. B. Glynn
Members: Mr. P. Pierson
 Ms. H. Murphy

heard this appeal at Roscommon on 23rd March 2011

Representation:

Appellant:

Mr Pdraig Mulligan, Impact, 23-24 Mulvoy Business Park, Sean Mulvoy Road, Galway

Respondent:

Local Government Management Services Board,
Local Government House, 35-37 Ushers Quay, Dublin 8.

It was common case that the appellant commenced employment with the respondent on 29th January 2007 and that her employment was terminated on 1st January 2010. It was also agreed that the appellant was paid €533.61 gross per week.

The respondent stated that the appellant was employed to carry out the work previously allocated to another employee who was on a leave of absence but whom may not have returned to work. The contract of employment provided to the appellant specified that she would be employed for as long as the other employee was on this leave of absence. Therefore the respondent contended that no redundancy situation existed and that the appellant was dismissed when the other employee returned to work as the appellant's contract had then come to an end.

The appellant held that she was made redundant because she was engaged as a full time employee whereas the person she was replacing worked on a part time basis. Therefore the post filled by the appellant was different from that held by the employee whom she was supposed to have replaced on a temporary basis.

Determination

Having considered the evidence adduced the Tribunal is satisfied that the appellant was dismissed by way of redundancy. In making this determination the Tribunal considered the relevant Acts and in particular section 9 1 (b) of the Redundancy Act, 1967 as amended by section 6 (b) of the Redundancy Payments Act, 2003.

9.—(1) For the purposes of this Part an employee shall, subject to this Part, be taken to be dismissed by his employer if but only if—

(b) where under the contract under which he is employed by the employer he is employed for a fixed term, that term expires without being renewed under the same or a similar contract, or

6.—Section 9(1) of the Principal Act is amended by substituting the following for paragraph (b):

“(b) where, under the contract under which the employee is employed by the employer the employee is employed for a fixed term or for a specified purpose (being a purpose of such a kind that the duration of the contract was limited but was, at the time of its making, incapable of precise ascertainment), that term expires or that purpose ceases without being renewed under the same or similar contract, or”.

The Tribunal finds that the appellant was employed for a specific purpose ie. to replace another employee who may or may not return to work and that when this other employee did return to work the appellant’s contract was terminated and she was dismissed for the purposes of the Redundancy Payments Acts. The Tribunal attached no relevance to the fact that the appellant worked full time whereas the other employee worked part time.

Accordingly the Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

DOB	17 th December 1982
Commencement Date	29 th January 2007
Date notice received	N/A
Termination date	1 st January 2010
Gross pay	€533.61

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

