

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE
-appellant

CASE NO.
RP456/2010
MN226/2010

against

EMPLOYER
EMPLOYER
EMPLOYER
under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. J. Reid
Mr G. Whyte

heard this appeal at Dublin on 17th May 2011

Representation:

Appellant: Mr Noel Devitt BL instructed by Ms. Mary Cullen, Cullen & Co, Solicitors, 86-88
Tyrconnell Road, Inchicore, Dublin 8

Respondent: No appearance by or on behalf of the respondent

The decision of the Tribunal was as follows:-

The appellant was made redundant in October 2009 and received her statutory redundancy payment. However the respondent when calculating her redundancy had omitted her service from the 23rd February 1999 to the 15th November 2004. The appellant is claiming this balance.

The appellant gave evidence that she commenced employment with the respondent on the 23rd February 1999 as a receptionist in their head office. She finished in this position on 28th January 2000 and commenced working in the respondents overseas department as a travel representative on 7th April 2000 when their holiday season commenced until the 15th October 2000 when the season ended. She worked every holiday season for the respondent up to and including the 2004 season until 15th October 2004. She then went to work as a travel advisor in the respondents Limerick branch on the 15th November 2004.

While she was working abroad she reported to the overseas holiday department and the customer

service department. While abroad she was instructed and paid by the respondent who provided her with a uniform. Her wages were paid from the money they collected on the sale of tours. When she went abroad to work for the respondent nobody had indicated to her that her employment status had changed. Each season abroad she received a contract from the respondent. These are titled “agreement for services”, clause B states “this is a contract for the provision for services and not a contract of service”.

The time spent working abroad for the respondent was seasonal and she never at the end of each season received a letter from the respondent stating that she no longer worked for them.

In 2004 she decided to work for the respondent in Ireland and she signed a new contract when commencing in their Limerick branch. She thought her employment was continuing. As part of her new role she was asked to train resort representatives to sell.

For the periods that she was not working in the years of seasonal work, she had never claimed social welfare. She did not understand the system of how she was being paid while abroad and assumed her employment payments were being made to the Irish state. She had received a months notice on her termination however there is two additional weeks pay due to her because of her service.

Determination

The Tribunal having heard the un-contradicted evidence of the appellant note that in her evidence she stated that she left her initial employment with the respondent on the 28th January 2000. Some months later she commenced work abroad as travel representative under a contract for services and continued to work on a seasonal basis for the respondent up until 24th October 2004. She commenced a new contract of employment with the respondent in their Limerick branch on 15th November 2004.

Based on the uncontested evidence of the appellant the Tribunal finds no basis for the appellant’s appeal for additional monies under the Redundancy Payments Acts, 1967 to 2007. Therefore the appeal under the Redundancy Payments Acts, 1967 to 2007 is dismissed and accordingly the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)