

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:  
EMPLOYEE

*-appellant*

CASE NO.  
RP831/2010  
MN554/2010

Against

EMPLOYER

*-respondent 1*

EMPLOYER

*-respondent 2*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B. L.

Members: Mr. M. Flood  
Ms M. Maher

heard this appeal at Dublin on 15th December 2010  
and 26th August 2011

#### **Representation:**

Appellant: Ms Lorraine Walsh, Ashbourne Citizens Information Centre,  
Unit 2, Killelland Square, Ashbourne, Co Meath

Respondent 1: Ms. Fiona Higgins, IBEC, Confederation House, 84-86 Lower Baggot Street,  
Dublin 2

Respondent 2: Mr. Ultan Courtney, Courtney HR, Barrick Lodge, Barrick Lane, Lusk,  
Co. Dublin

#### **Respondent 1**

Respondent 1 is a hospital that used respondent 2, an employment agency, to engage staff. Respondent 1 notified respondent 2 a week in advance how many staff they would require. The appellant's services were regularly required by respondent 1 and she was requested to work in the x-ray department for the previous 5 years. Due to budget constraints respondent 1 restructured the staff of their x-ray department. Due to this re-structuring respondent 1 no longer requested the appellant's services as they could cover the shifts with existing members of staff. Respondent 1 has no employment or pay records for the appellant; their only record is of invoices from respondent 2.

## **Respondent 2**

Respondent 2 is an employment agency. The appellant commenced employment with the agency in February 1998. Respondent 2 received notification from respondent 1 that the shifts the appellant worked would now be covered by existing staff. Respondent 2 informed the appellant of this 2 weeks in advance of her finish date. Respondent 2 also informed the appellant of the fact that she would now have to place herself 'on-call' in order to be offered any upcoming work. The agency staff were required to put themselves on-call on a weekly basis, the appellant was aware of this as she had to place herself on-call weekly before her regular hours with respondent 1. There was no other continuous regular work available for the appellant.

The appellant's last shift in respondent 1 was the 11<sup>th</sup> of October 2009. The appellant placed herself 'on-call' from the 19<sup>th</sup> of October to the 25<sup>th</sup> of October. During this period she refused a night shift on the 21<sup>st</sup> of October citing short notice and on the 22<sup>nd</sup> of October stating that she would not work in respondent 1 again after finishing in the x-ray department. The appellant did not put herself on-call after the 25<sup>th</sup> of October 2009 so the respondent did not offer her any further work. By letter dated the 11<sup>th</sup> of November 2009 the appellant requested a letter stating she was made redundant for Social Welfare and her P45 in order to claim Social Welfare benefits.

By letter dated the 9<sup>th</sup> of August 2010 in response to a letter from respondent 2 of the 22<sup>nd</sup> of July 2010, the appellant's representative acknowledges that there was an offer of work, *'the appellant advises that she cannot re-register with your company due to the dispute at present. She has considered the offer carefully and declines the offer at this time.'*

## **Appellant's Case**

The appellant was given two weeks' notice that her employment was being terminated with respondent 1. The appellant regularly rang respondent 2 and informed them she was available for a few nights work and respondent 2 would book the work for her. The appellant was offered one shift on the 21<sup>st</sup> of October, which she declined due to short notice. The appellant did put herself on-call but was only offered the 'odd' shift and needed a full-time job. The appellant felt like she had lost her job and requested her P45 in order to claim Social Welfare payments.

The appellant was not aware of the offer of work by letter dated the 11<sup>th</sup> of November 2009; the appellant presumed they were suggesting she take a course to expand her experience. The offer of work by letter dated the 22<sup>nd</sup> of July 2010 was not an offer of work only an offer to submit her C.V., *'the hospital has expressed a keen interest in receiving her C.V.'*

**Determination**

The Tribunal determines that the appellant should have served respondent 2 with an RP9 ‘notice to claim redundancy’ form, seeking the respondent to provide the appellant with 13 consecutive weeks work as prescribed by the Act. Having failed to serve the respondent with an RP9 and having refused the work offered, the appellant is deemed to have resigned from her employment.

The Tribunal find that the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)