

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE –**Appellant**

RP2816/2010  
MN2021/2010

against

EMPLOYER –**Respondent**

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. D. MacCarthy S.C.

Members: Mr. E. Handley  
Mr. S. O'Donnell

heard these appeals at Dublin on 5 October 2011

#### **Representation:**

Appellant:

Ms. Julienne Paye, Richard Grogan & Associates,  
16-17 College Green, Dublin 2

Respondent:

Mr. Michael McGrath, IBEC, Confederation House,  
84/86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:

#### **Determination:**

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 having been addressed at a Payment of Wages Act hearing before a Rights Commissioner that part of the claim was withdrawn.

The appellant was employed by the respondent from 28 November 2005. At all times on a part-time

basis. From November 2009 the appellant worked some nine hours a week during the hours 12-30pm to 3-30pm on a school-cleaning contract. The respondent lost this contract from 30 June 2010 and, as no suitable alternative employment was immediately available, the appellant was placed on lay-off from 1 July 2010.

Subsequently the appellant was offered work at four different locations. One of these locations was for early mornings; a second for mornings and the other two afternoon work at times later than the appellant had previously worked. On 15 July 2010 the respondent wrote to the appellant stating that the appellant was not entitled to a redundancy lump sum payment having declined offers of suitable alternative employment.

On 19 July 2010 the appellant met with a Human Resource representative from the respondent and told the respondent that the alternative positions offered did not suit the appellant's other job. The claimant requested more time to consider the alternatives. It is the appellant's position that the respondent was aware that she had other part-time employment at times of the day both before and after the hours she worked for the respondent.

During a telephone conversation on 21 July 2010 the appellant again requested more time to consider the alternatives. On 18 August 2010, having heard no more from the appellant, the respondent wrote to the appellant with their understanding that, as she had not responded, it understood this to mean that the appellant had resigned. The respondent's P45 was processed the same day.

Section 15 (2) (c) of the Redundancy Payments Acts provides

*“An employee who has received the notice required by section 17 shall not be entitled to a redundancy payment if in the period of two weeks ending on the date of dismissal-*

*(c) the offer constitutes an offer of suitable employment in relation to the employee”*

The Tribunal has long taken the view section 15 of the Acts requires different tests for the word “unreasonable” and the word “suitable”. “Unreasonable” is to be judged under the long established common law concept of the “reasonable man” – the objective bystander. However the word “suitable” refers to the position of the employee only, and is therefore subjective. By this test the Tribunal finds that the offers of alternative work were not “suitable” to the appellant who is therefore not disentitled under section 15. Accordingly, the Tribunal is satisfied that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date of Birth

24 November 1973

Employment commenced	28 November 2005
Employment ended	18 August 2010
Gross weekly pay	€86-00
Non-reckonable service from	1 July 2010
Non-reckonable service until	18 August 2010
Reason for non-reckonable service	Lay off
Amount of lump sum	€875-48

This award is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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