

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
RP3005/2010,
MN2174/201

against

EMPLOYER

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: Ms. K. T. O' Mahony B.L.
Members: Ms. M. Sweeney
Mr J. Flavin

heard this appeal at Cork on 27th May and 30th September 2011

Representation:

Appellant : Mr. Billy Kyne, Regional Organiser, Unite Trade Union, Keyser Street, Waterford

Respondent : Mr Dudley Potter, Malone & Potter, Solicitors, 7 Cope Street, Dublin 2

The decision of the Tribunal was as follows:

Summary of the Evidence

The respondent is a registered trade union with a negotiating licence. It has its headquarters in Dublin and a number of branches throughout the country. The appellant commenced employment as a secretary in one of its branch offices (the local branch) in September 2001 and was later promoted to the position of office manager there. By letter dated 8 March 2010, the respondent's then Acting General Secretary informed the appellant that, due to the serious financial situation in which the respondent found itself because of the sharp downturn in the construction industry, she was to be put on temporary lay-off from 12 March 2010. The respondent also furnished the appellant with form RP9.

Some time prior to this a dispute had developed within the respondent trade union. In February 2010 the local branch registered itself as a separate employer with the Revenue Commissioners and got its own employer number. The local branch employed the appellant from early May 2010 to February 2011 and paid her out of local branch funds. On 20 May 2010 the Acting General Secretary wrote to the appellant informing her that she was still an employee of the respondent, that she was to remain on lay-off and that her failure to comply with this instruction "will be considered an act of gross misconduct and could lead to your dismissal".

In early July 2010 the appellant completed part B of the RP9 form and submitted it to the secretary of the union. She neither received a reply to her application for redundancy nor a further reprimand from the respondent as she continued to work for the local branch.

The respondent's position was that it had put the claimant on temporary lay-off. The local branch had registered itself as an employer without the respondent's authority. It then purported to continue the appellant's employment and paid her from funds which ultimately belonged to the respondent. The appellant's employment with the local branch ceased in February 2011.

In acknowledging there were issues within the union from at least 2009 onwards the general secretary (the former Acting General Secretary) accepted he did not inform the appellant of the ongoing situation. He felt that he could not deal with the appellant's redundancy application as it would not be proper practice to declare her redundant, accept the rebate, but at the same time fundher continuing employment.

Determination

An internal dispute had arisen within the union. The appellant became a victim of that dispute. Whatever the difficulties within the union and between the respondent as employer and the local branch which became a registered employer with its own employer number, the respondent had put the appellant on temporary lay-off from 12 March 2010 and issued her with an RP9 form. On 20 May 2010 the respondent's Acting General Secretary wrote to the appellant informing her *inter alia* that she was still an employee. On 2 July 2010 the appellant completed part B of the RP9 form and submitted it to the respondent. As the respondent did not serve the appellant with a counter notice the Tribunal awards her a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth:	25 October 1979
Date of Commencement:	10 September 2001
Date of Termination:	12 July 2010
Non-Reckonable Service:	12 March 2010 to 12 July 2010
Gross Weekly Wage:	€686.01

A weekly ceiling of €600.00 applies to statutory redundancy payments.

As the appellant sought the payment of a redundancy lump by virtue of having been on lay-off she terminated her employment with the respondent and in such circumstances she is not entitled to compensation under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. Accordingly, the claim under those Acts fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

