

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

CASE NO.
UD1880/2010, RP2525/2010
MN1833/2010, WT837/2010

against

EMPLOYER

Under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. O'Connor

Members: Ms M. Sweeney
Mr D. McEvoy

heard this claim at Tralee on 8th March 2012

Representation:

Claimant : Mr Paddy Whelehan, Philip O'Sullivan & Company, Solicitors,
14 Denny Street, Tralee, Co Kerry

Respondent : Mr Anthony O'Gara, Ballinnusherig, Tralee, Co Kerry

The determination of the Tribunal was as follows:

Claimant's Case

The claimant commenced employment with the respondent in March 2008. While she was not employed on a fulltime basis she worked on average thirty hours per week up to the end of that year. Up to November 2009 her average weekly hours amounted to approximately twenty-five. Subsequent to that date the respondent did not seek her services nor did she receive any communication from her employer. While accepting she was a seasonal worker the claimant was concerned that the respondent had not contacted her with a view to recommencing work in 2010.

Faced with that situation the claimant acquired a part time job elsewhere and by June 2010 concluded that another person was employed by the respondent to take her place. She then asked and later received her P45 from the respondent. The claimant told the Tribunal that had the respondent asked her to return to work in 2010 she would have gladly accepted it.

The claimant also raised issues relating to underpayment of wages and how she was treated

regarding some public holidays.

Respondent's Case

No evidence adduced

Determination

There was no compelling evidence that this case was either a dismissal or a resignation. There is little doubt that poor communication contributed to the parting of the ways between the parties. On balance and following careful consideration the Tribunal finds that the claimant's employment terminated with the respondent by way of redundancy. Accordingly, the appeal under the Redundancy Acts, 1967 to 2007 is allowed and the claimant is awarded a statutory lump sum under those Acts and based on the following:

Date of Birth: 01 October 1988
Date of Commencement: 18 March 2008
Date of Termination : 15 June 2010
Non-Reckonable Service: 02 November 2009 to 14 June 2010 (lay-off period)
Gross Weekly Wage: €200.00

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

Since the claimant sought her P45 in this case it follows that the respondent cannot be liable for giving her notice of the termination of employment. Consequently, her appeal under the Minimum Notice and terms of Employment Acts, 1973 to 2005 falls.

The claim under the Unfair Dismissals Acts, 1977 to 2007 is mutually exclusive with the Redundancy Payments Acts and since the appellant succeed in the latter the claim under the former must fall.

There was no appeal before the Tribunal under the Payment of Wages Act. Therefore, the Tribunal has no jurisdiction in this case to make a determination on possible outstanding payments to the claimant.

The appeal under the Organisation of Working Time Act, 1997 is allowed and the appellant is awarded €400.00 as compensation under that Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

