

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
RP3155/2010
MN2290/2010

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 R. Maguire, B.L.
Members: Mr. W. O'Carroll
Mr M. McGarry

heard this appeal at Galway on 24th April 2012

Representation:

Appellant(s) : Mr Conor Dalton, Lockhart O'Leary Maher, Solicitors, 191 Howth Road,
Killester, Dublin 3

Respondent(s) :In person

Respondents Case

The respondent (PK) told the Tribunal that the appellant completed her apprenticeship with his firm over a nine year period. On completion and passing her final solicitor exams he informed her that she would not be retained by the practice. PK said the appellant asked to remain on in the practice in the role as legal secretary on a week to week basis until she obtained employment elsewhere. He agreed this on the basis she would not have any statutory rights. He subsequently became aware she had turned down two offers of employment during that time. Because he had informed her that she was not being retained he understood she did not qualify or was not entitled to redundancy. He told the Tribunal the appellant was not included on the practice insurance or submitted to the role of solicitor during that period following passing her exams.

PK said the appellant was a good worker and he had no issues with her. Following an issue relating to the misappropriation of monies in the practice by another employee he could not keep the appellant on and took the decision to downsize.

Appellant Case

The appellant (CF) gave evidence of commencing employment with the respondent in 2001 as a legal secretary. She was later offered an apprenticeship by the respondent and after a number of years passed her solicitor exams. Following passing her exams she was aware that the position was not permanent. Her statutory entitlements were never discussed during that time. She said that when it was agreed she would remain on at the practice it was never expressed to her that it was based on a week to week basis. CF explained she was offered a job to act as principle for a solicitor who had been restricted however she did not accept the offer. She received no other offers of employment. CF was admitted to the role in March / April 2008 but never applied for a practice solicitor's certificate as she was not insured.

Determination

The Tribunal has carefully considered the evidence adduced. The respondent failed to discharge the onus on him under Section 10 of the Redundancy Payments Act 1971 to show that the dismissal was not by reason of redundancy.

In circumstances where the respondent stated that he terminated the employment of the appellant because of financial pressures that meant he "could not keep the situation going indefinitely" the Tribunal is satisfied that this termination falls within Section 7 (2)(c) of the Redundancy Payments Acts.

Accordingly the Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Act 1967 to 2007 based on the following criteria

Date of Birth:	31 May 1961
Date of Commencement	17 April 2001
Date of Termination	26 March 2010
Gross weekly pay	€691.60

The appellant gave uncontroverted evidence of being notified on the 12 March 2010 of her employment being terminated on the 26 March 2010. On the date of termination she received one weeks pay in lieu of notice. The appellant is further entitled to be paid €691.60 being the equivalent of one week gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)