

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**  
EMPLOYEE - *appellant*

**CASE NO.**  
RP47/2011

against

EMPLOYER - *respondent*

under

### **THE REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. D. Winston  
Mr F. Barry

heard this appeal at Dublin on 23rd March 2012

#### Representation:

Appellant: Ms. Aoife Sheehan, John Sherlock & Company, Solicitors,  
9-10 Main Street, Clondalkin, Dublin 22

Respondent: Mr Eddie Keenan, Construction Industry Federation, Construction House, Canal  
Road, Dublin 6

The decision of the Tribunal was as follows:

#### Preliminary issue:

When submitting her T1A form the claimant omitted to tick the box to claim under the Unfair Dismissals Acts 1977 to 2007; however the reasons for her claim on same states that she was unfairly selected for redundancy. It was the respondent's position that they were there to meet an appeal under the Redundancy Payments Acts 1967 to 2007.

The claimant was placed on temporary lay off on the 17<sup>th</sup> July 2010. She submitted a RP9 form to the respondent by post on the 12<sup>th</sup> October 2010 dated the 5<sup>th</sup> October 2010. It was the respondent's position that by submitting the RP9 form the claimant had voluntarily left her employment. The claimant had received an enhanced redundancy package from the respondent. It was the claimant's position that her contract had been fundamentally breached when she was selected for lay off in July 2010. She had submitted the RP9 form for financial reasons.

The chair of the Tribunal directed both parties to the RP 9 form where it states:

*“An employee who claims and receives a redundancy payment in respect of lay off or short time is deemed to have voluntarily left his/her employment and therefore not entitled to notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.”*

The Tribunal allowed both parties to submit written legal submissions in respect of this case.

**Determination:**

The Tribunal has considered the submissions received from the parties.

In filling in part B of the form RP9 the claimant is presumed to have indicated that she made a decision to cease her employment with her employer. If the claimant had been forced to fill in the form by her employer that would be considered to be unfair pressure by her employer and would constitute an unfair dismissal. The force alleged to be used by the employer in this case was the need of the employee for the redundancy lump sum payment. In every lay-off there are two competing pressures bearing on the parties, one being the requirements of the business to lay off employees in order to save money and the other being an employee’s requirement for payment. This exists in every case of lay off and does not constitute an unusual pressure by an employer on an employee to leave his employment.

In the circumstances and reflecting on the text of part B of the RP9 form (quoted above) the only conclusion the Tribunal can come to in this case is that the claimant voluntarily left her employment.

In the circumstances the Tribunal has no jurisdiction to hear this matter.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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