

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE *-appellant*

CASE NO.
RP2677/2010
MN361/2012

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 L. Ó Catháin

Members: Mr J. Browne
Mr F. Dorgan

heard this appeal at Waterford on 24th February 2012
and 21st May 2012

Representation:

Appellant: REP

Respondent: Mr. Aidan McGrath, Das Group, Das Legal Expenses, 12 Duke Lane, Dublin 2

Appellant's Case

The appellant commenced employment in 2004 with the original respondent owners. The respondent bought the business in 2005. The respondent has a number of premises (shops); it states in the appellant's contract that she could be located in any of the premises.

The appellant was aware that the respondent was trying to sell the business. The appellant was not informed that she could remain in employment with the new owners. In June 2010 the appellant received a text from a work colleague to say 'the shop is sold', that was the appellants only notification as she had been on sick leave since March 2010. The respondent called to the appellant's house and informed her that 'there'd probably be a few hours for you with the new owners.' The appellant phoned the respondent and asked if she was being made redundant, as her employment status and offer of hours was vague and not in writing. The respondent informed her that there was no money for redundancy and offered her €600.00. The appellant declined the offer of €600.00 and the respondent said that he would organise her P45. The

respondent did not make her an offer of alternative employment or say that the new owner would take her on.

The appellant would have worked for the new business owners or would have accepted any alternative offer from the respondent. There was no written or concrete offer of work made to the appellant. The appellant does not recall receiving a letter from the respondent dated the 19th of July 2010 stating that ‘as you have now confirmed that you do not wish to take me up on the offer of suitable alternative employment.’

A colleague of the appellant gave evidence that she was aware that the business was being sold. She was not offered employment with the new respondent owner and was not aware of any alternative position available.

Respondent’s Case

The respondent owners wife, who also works in the business gave evidence that the respondent told the appellant in February 2010 that there was an offer to take over the business. There was an alternative position available for the appellant in the other shop.

The respondent owner gave evidence. He informed the appellant and the other staff member that the business was being taken over in March 2010. The following week the appellant went out on sick leave. The appellant said she would only work for the respondent and not the new owner. The respondent called to the appellant’s house and informed her that the sale was going ahead and that she had the option in working in his other shop as she would not work for the new owner. The offer or notification was not put in writing. The respondent could not make her redundant as he had an alternative position available for her. The respondent informed the appellant that she could accept the alternative employment offered or work with the new business owners. The respondent offered the appellant €600.00 as a gesture of goodwill. The respondent wrote to the appellant on two occasions in an attempt to clarify the situation. The appellant responded by letter dated the 26th of July 2010 stating she intended taking a case with the Employment Appeals Tribunal.

The new respondent owner gave evidence that she was willing to continue to employ the appellant.

Determination

Having carefully considered the evidence adduced by both parties, the Tribunal find that the respondent did offer the appellant suitable alternative employment and therefore Sec 15 (2) of the Redundancy Payments Acts 1967 applies. It states that,

'2) 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,
(e) he has unreasonably refused the offer.'*

The Tribunal find that the appeals under the Redundancy Payments Acts 1967 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)