

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

EMPLOYEE (*appellant*)

WT20/2007

CASE NO.
RP27/2007
MN54/2007

Against

EMPLOYER (*respondent*)

Under

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 M. O'Connell B.L.

Members: Mr P. Pierce
 Mr C. Ryan

heard this appeal at Dublin on 20th December 2011 and 27th March 2012

Representation:

Appellant(s) : McDonald, Solicitors, 12 Skeffington Street, Wexford

Respondent(s) : Ms. Rhona Murphy, Ibec, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The decision of the Tribunal was as follows:

Preliminary Issue

It was argued by the respondent's representative that the Tribunal did not have jurisdiction to hear the case as the claim was out of time. The parties made written (filed) and oral (noted) submissions to the hearing. Having considered the verbal and written submissions, the Tribunal is satisfied that the appellant lodged her claim within time. As the ownership of the business had changed during the intervening period, the Tribunal decided to hear the evidence in this case.

On day two of the hearing, the respondent's representative urged the Tribunal to re-consider the preliminary issue. The Tribunal stressed the need to establish the party responsible for the claim, as there were several changes in ownership. The claimant's representative withdrew the claim under the Organisation of Working Time Act. The respondent's representative stated that the fact of dismissal is in dispute as there was no dismissal by the respondent. The first the respondent knew of the claimant was when the T1A claim form was received. The Tribunal pointed out that the onus was on the claimant to show a redundancy situation had existed.

Appellant's case

The claimant's representative explained to the Tribunal that the retail unit was sold to the respondent on 8th March 2006. This company had ownership until 24th October 2006. On 1st September 2006 the appellant returned to work from long term sick leave. She requested a letter from the respondent for bank purposes. In October 2006 the ownership of the business changed to JC. The appellant was never asked for sick certs from her first employer, MG. She was not aware that MG had left the business. He had always said when you are fit you can return to work. The appellant was a charge hand in the frozen and dairy area. She was asked by the bank to get proof that her job would be safe on her return from sick leave. When she went to the premises on 1st September 2006, a man she did not recognise asked her who she was. She did not ask him his name. He agreed to give her a letter for the bank but stated that there was no job for her to come back to as the position had been filled. The appellant confirmed to the Tribunal that she had been replaced but did not know who was doing her work. She did not receive a P45 or her Minimum Notice.

Under cross-examination, the appellant stated she was made redundant on 1st September 2006 when she was told she no longer had a job. That date was the first she knew of the change in ownership.

Giving evidence VD stated that she was an employee of MG when the appellant left. The appellant worked with her for one week before she went sick. She was a part time worker with less hours than the claimant.

After a short recess, the Tribunal stated that it is satisfied that the claimant has not discharged the onus of proof in relation to the redundancy claim and proceeded to hear the Minimum Notice claim. The claimant's representative stated that he felt a redundancy arose as the claimant was told her position had moved from full time to part time and that this was when VD was employed on shorter hours, therefore the appellant's position was diminished.

The Tribunal adjourned for a 10 min recess and stated that there was nothing additional from the submissions put forward and the burden of proof was not discharged by the appellant and that further details would be given in the final determination.

The respondent was then asked to deal with the Minimum Notice claim. Giving evidence PW, Business Manager said that the respondent was involved with this retail outlet since March 2006. The Manager was DP at the time. PW could not say whether DP fitted the description given by the appellant as being the person she spoke to on 1st September 2006. The signature on the letter looked like that of DP. DP never mentioned that a lady had been in that day. There was no mention of the appellant on the payroll system when the respondent took over the business.

Under cross-examination, PW stated that DP would not have had the authority to tell the claimant that there was no job for her. DP was the Manager and was answerable to PW. FM who was the book keeper at the time, has since left the employment. CL, who was employed in the office at the time, had given her notice and was no longer employed there.

Giving evidence, CS stated she was HR Manager with the respondent. She assisted with the smooth transition of the business. There was no mention of the claimant during the takeover. DP had no authority to dismiss a member of staff. If she had been aware of the claimant, she would have met with her and would have completed a return to work programme.

Under cross-examination, CS said she would have been surprised if DP had dismissed the claimant, who was not part of the payroll.

Determination

The Tribunal, having carefully considered all of the evidence and the submissions in this case, accepts that the Respondent was – on the 1st of September, 2006 – in ownership of the retail premises at which the Claimant had previously been employed as a shop assistant.

The Tribunal accepts that the Claimant entered the premises on the 1st of September, 2006 after an extended period of sick-leave. During her absence, she had failed to notify the owners of the business when or whether she would be returning. On her own direct evidence, the Claimant had been replaced in her employment. She accepted that she had not been made redundant. On this basis, the Tribunal determines that her claim for relief under the Redundancy Payments Acts fails.

There was a conflict in the evidence relating to when or whether the Claimant's employment was terminated. The Tribunal prefers the Claimant's account of the exchange with the manager of the Respondent's premises on the 1st of September, 2006 when she was led to believe that her employment had ceased and without the statutory notice to which she was entitled. Accordingly, her claim under the Minimum Notice and Terms of Employment Acts succeeds and the Tribunal awards the sum of €2,392 being eight weeks gross pay.

The Tribunal notes that the claim under the Organisation of Working Time Act was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)