

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE –**Appellant**

RP333/2011

against

EMPLOYER –**Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Wallace

Members: Mr G. Andrews
Ms S. Kelly

heard this appeal at Castleconnell on 14 September 2012

Representation:

Appellants:

Ms Caroline Clifford, Mandate Trade Union,
Killoran House, Catherine Place, Limerick

Respondent:

Ms Muireann McEnery, Peninsula Business Services (Ireland) Limited,
Unit 3 Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

The respondent operates a chain of coffee shops across the country. The appellant was employed by the respondent from October 2006, initially in the Ennis shop but later transferred to a shop in Limerick. The employment was uneventful with the appellant a well-regarded member of staff until 6 October 2010 when the respondent was locked out of the Limerick shop following a dispute with its landlord.

As a result all the staff of the shop were laid off from 6 October 2010. The area manager (AM), having spoken to the appellant, among others, on the phone the previous day met all the staff on 7 October 2010 to confirm this. The lay-offs were confirmed in letters to all the staff from the human resource manager HR on 15 October 2010. In this letter HR stated that the respondent was doing everything possible to ensure that a new shop opened as soon as possible and most likely within six weeks.

The appellant found new employment from 26 October 2010. On 6 November 2010 the appellant signed part B of form RP9 in order to claim a lump sum payment under the Redundancy Payments

Acts. It was the appellant's position that she posted this to HR on 8 November 2010. HR forwarded form RP9 by fax to their head office in Edinburgh on 12 November 2010. The respondent's position was that this was the day the form was received in their Cork office.

On 16 November 2010 HR wrote to the appellant to inform her that the new shop was to open on 19 November 2010 and that there was work for her from the following day 17 November 2010. The appellant's position was that she did not receive this letter and saw it for the first time at the Tribunal hearing. Although neither the appellant nor AM can recall the exact date, it was common case that AM telephoned the appellant about one week before the new shop opened and it was the respondent's position that, during this conversation, the appellant told AM that she had a new job and would not be returning to the respondent.

Determination:

Whilst the appellant was perfectly entitled to seek alternative employment during the period of lay off, the Tribunal is satisfied that, in the telephone conversation between AM and the appellant in the week before the new shop opened, the appellant indicated her intention to not return to the new shop as she had already obtained alternative employment. The Tribunal is satisfied that, during this phone call, the appellant resigned from her position with the respondent. This was around the same time as form RP9 was served on the respondent and certainly before the expiry of the one week period in which the employer had to give counter notice. In those circumstances the Tribunal is satisfied that the appellant resigned from her employment before the conditions entitling her to a lump sum payment had been fulfilled. It follows that the appeal under the Redundancy Payments Acts, 1967 to 2007 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)