

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

EMPLOYEE

-appellant

CASE NO.

RP2322/2011

against

EMPLOYER *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal

(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. F. Cunneen

Mr. G. Whyte

heard this appeal at Dublin on 1st February 2013

Representation:

Appellant: In person

Respondent:

Background:

This case is before the Tribunal by way of an employee appealing under the Redundancy Payments Acts 1967 to 2007. The particular case is whether the claimant resigned or whether her position was redundant.

The employee contends that she requested redundancy from the respondent because they could not offer her sufficient regular employment. She worked as a data analyst/manager/inputter for the respondent. The respondent's clients included the FSAI and the claimant was working in the FSAI up until 08th December 2010. Despite asking the respondent to find her suitable alternative employment she was only offered sporadic work between 08th December 2010 and 05th July 2011; specifically she only worked for ten days between 08th December 2010 and 05th July 2011, which was for the HSE client and the ESB client of the respondent.

On two occasions she wrote to the respondent requesting redundancy, on the first occasion (letter 05th July 2011 opened to the Tribunal) sending a form RP9 and including a request for her form P45 because the respondent had not found her regular employment. The respondent sent her form P45 to her but did not acknowledge receipt of the RP9. She then sent a form RP77, (letter 22nd July 2011 opened to the Tribunal) but got no response.

Other documents were opened to the Tribunal, one of which is an e-mail dated 30th October 2011, which the appellant's sister.

The respondent contends that the appellant was not dismissed from her employment as stated on her RP forms enclosed in her letters of 05th July 2011 or 22nd July 2011. The respondent

states that this cause confusion as the respondent as an employer has no previous experience of dealing with a claim for lay-off / short time procedures or “partial redundancy”. However the employer states also that if a redundancy payment is due they are willing to pay and has instructed solicitors to investigate and or advise on the matter. An e-mail of the respondent’s solicitor to the appellant dated 28th October 2011, seeking clarification was opened to the Tribunal.

The Tribunal heard evidence from the appellant and from the appellant’s sister.

The Tribunal heard evidence from the managing director of the respondent and from the Human resource/ administrator of the respondent.

The respondent representative stated that the appellant accepted the nature of the work in her own evidence.

Determination:

Based on all the evidence heard and submissions made the Tribunal determines that a redundancy situation existed and that the appellant’s position was redundant.

Accordingly, Tribunal awards the appellant a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth: 21st November 1970

Date of Commencement: 20th November 2003

Date of Termination: 12th May 2011

Gross Weekly Pay: €479.51

Note that the appellant worked for two full weeks between 08th December 2010 and 05th July 2011, and that the period between 08th December 2010 and 12th July 2011, excepting the two weeks which the appellant worked, is to be treated as non-reckonable.

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)