

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
RP666/2006
MN858/2006

against
Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr M. Murphy
Mr O. Nulty

heard this appeal at Cavan on 31st January 2008

Representation:

Appellant(s) : Mr. Declan Ferry, Assistant Organiser, SIPTU, Ashe Street, Cavan Co. Cavan

Respondent(s) : Mr Garrett Fortune, Garrett J. Fortune & Co., Solicitors, 11, Church View,
Cavan

The decision of the Tribunal was as follows:-

Respondent's Case:

The owner of the respondent business gave evidence. He explained that the appellant was employed in the shop that was attached to Cavan General Hospital.

He explained that the lease on the premises was up in April 2006 but was asked by the administration of the hospital to remain trading until the new franchisee was hired. On July 3rd 2006 he received notification that his lease was finally terminated. He told the Tribunal that he informed the appellant the following day. He stated, when asked, that he had informed her both verbally and in writing. He explained that he had written a letter to the appellant and left it beside the cash register, which was where all correspondence was kept.

The witness stated that he had received notification from the HSE (Health Service Executive) stating that the appellant could apply for a position with the new franchisee. The appellant applied for the position and was successful.

On cross-examination he stated that he had not offered the appellant an alternative position in his second shop.

When asked by the Tribunal he stated that he had kept the original letter of notice and left her a copy in an addressed envelope by the cash register. He had no conversation with the new franchisee and a transfer of undertakings. When asked, he stated that the original lease with the HSE was for ten years. He said that he had advised the appellant to apply for the new job.

Appellant's Case:

The appellant stated that the respondent had employed her for six years. He had no contract of employment. She stated that she had received a letter of notice. She had asked the respondent for a redundancy payment but was informed that it was a transfer of undertakings. She was not offered an alternative position with the respondent. She stated that she had received her last weeks' wages, a reference and her P45.

On cross-examination she stated that the respondent had informed that his lease had not been renewed and they would have to finish up at the end of the month. He did not state a specific date. He had told her to apply for a position with the new franchisee. When asked, she stated that it was her business to look through the respondent's correspondence. She commenced employment with her new employer on August 2nd 2006 and earned a higher wage.

Determination:

The Tribunal are satisfied that the situation in relation to a transfer of undertakings did not take place. The Tribunal finds that a redundancy situation occurred as stated in the Redundancy Payments Acts, 1967 to 2003 and awards the sum as according to the information set below:

Date of Birth:	October 16 th 1944
Start of Commencement :	March 10 th 2000
Date of Termination:	July 28 th 2006
Gross Pay:	€ 113.40

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)