

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
RP1206/2010
MN856/2010

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 P. Hurley

Members: Mr. W. O'Carroll
Mr N. Dowling

heard this appeal at Tullamore on 10th June 2011

Representation:

Appellant: In person

Respondent: Company Director

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant gave direct sworn evidence. She normally worked a 16-hour week. On the 8th December 2009 the appellant was working her normal shift when the directors wife informed her that she would have to take annual leave. She had taken a week earlier in the year and the normal practise was that the respondent would pay her for holidays worked at the end of the year.

On the 18th December 2009 the directors wife telephoned her, as she had not received her holiday pay. Then the director called out to her on the 18th December 2009 with his chequebook and her P60. He told her business was quiet and he would in touch with her after Christmas and failing that she would be entitled to redundancy of €1080.00. The director's wife telephoned her on the 3rd January 2010 and asked her she would be interested in 8 hours per week. She refused this offer. She telephoned the director and sought her redundancy who told her she had dismissed herself by refusing the 8 hours work.

Respondent's Case

The director explained that he operated a small shop along with his wife. They had three staff, his

wife, the appellant and another hereinafter referred to A. The appellant had built up four weeksholidays in previous years he would buy them from her. However as things were quiet he told hiswife that the appellant would have to take her holidays. His wife arranged for the appellant to taketwo weeks holidays and he was going to pay the appellant for the other two weeks. A expressed aninterest in taking over the shop. He explained to the appellant that business was not good and thatthere was a possibility that A would take over the business and if this was to happen she would bedue her redundancy. A decided that she would not take over the business and they decided to keepit open by his wife picking up more hours and reducing the appellants and A's hours to eight. Theyoffered the appellant the eight hours. He agreed to meet with the appellant on the 25th January 2010and the appellant told him she was waiting for her redundancy. He explained to her that she wasnever laid off she had been offered 8 hours of work per week. The appellant had requested her P 45in January.

Determination

There was no dismissal in this case, the appellant was offered reduced hours but did not take them up. The reduction in the appellant's hours of work did not bring her within the provisions of theRedundancy Payments Acts, which allow for a claim for redundancy in respect of short-time. Short-time is a reduction in weekly earnings to less than half the normal weekly earnings or areduction in the hours worked to less than half the normal weekly working hours. The appellantpre-empted any possibility of such a claim by leaving her employment. The appeal under theRedundancy Payments Acts, 1967 To 2007, fails.

The claimant left her employment, therefore her claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)