

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.

Employee

RP590/2006  
MN752/2006

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: Mr. T. Ryan

Members: Mr. J. Reid  
Mr. N. Broughall

heard this appeal at Dublin on 30th April 2007

Representation:

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Appellant(s): The appellant in person

Respondent(s): Mr. Michael McNamee BL instructed by  
Ms. Noreen Maguire, Maguire Muldoon, 58 Dufferin Avenue,  
South Circular Road, Dublin 8

The decision of the Tribunal was as follows:-

#### **Appellant's Case**

The appellant told the Tribunal that he drove a truck and delivered cement for the respondent from September/October 1999 to the 6 April 2006. A blower broke in the truck, the appellant tried to replace it and the truck was out of service for a number of weeks. The appellant telephoned the proprietor of the company and told her that there was no money in the company account. The proprietor told the appellant to sign on and the appellant requested his P45 and his P60. He received his P45 at the beginning of July 2006. He received an e-mail from the proprietor in August 2006, which indicated that the truck was ready. The appellant went to the roadstone quarry where the truck was parked and the truck was exactly as he had left it. He then submitted a claim for redundancy. The appellant stated that he had a difficulty in obtaining P60's from the respondent and he lost two-years tax rates. He never received a payslip from the respondent.

In cross-examination the appellant stated that he did not know if the business was going to cease. The appellant agreed that he was responsible for the truck; he also raised invoices and accepted monies on behalf of the respondent. The appellant's wages were not paid for two weeks but he received wages from April 2006 until June 2006 when the truck was not in use. The appellant submitted estimates for a new blower to the proprietor. He did not have the authority to undertake repairs on the truck. He recalled a conversation he had with the proprietor at the end of May 2006 when she told him that the account must be out of money. On 15 August 2006 he received an e-mail, from the proprietor, which indicated that the monies owing to the respondent by revenue had been paid. He tried to telephone the proprietor but he was unable to contact her. He awaited a response from the proprietor but did not receive one. He left the truck in the quarry and he received a letter from the proprietor requesting him to leave the keys on the tyres.

The truck was located in a secure car park for twenty-four hours a day. He had no authority to undertake work on the truck. He suggested borrowing money to purchase the blower and submitted all estimates that he obtained to the proprietor and he received no further instruction. The appellant had a mortgage to pay and he had worked all his life. He was paid through a bank account and money was lodged to his account on a weekly basis. He did not receive a letter of appointment, or terms and conditions of employment. The respondent contracted the truck to Roadstone and he received his instruction from Roadstone. The appellant maintained the truck and he serviced the engine. He paid the insurance and submitted any bills in relation to the truck to the respondent. The truck was very old and it caused problems. If he received payment from Roadstone he lodged it to the company account. He did not want to return to work with the respondent as he could end up in the same situation. The appellant stated that he was not employed as a mechanic and he has not obtained alternative employment.

### **Respondent's Case**

The proprietor of the respondent company told the Tribunal that she took over the respondent company after the death of her parents in 1997 and 1999. Her mother left the business in her will, her father was the driver and her mother looked after the accounts. Her mother died in November 1999 and the appellant was in situ at this time. She was not aware if a contract of employment was in place for the appellant and she knew that her mother had discussions with the appellant. The appellant was paid a weekly wage to drive the truck. Roadstone subcontracted the truck from the respondent. The appellant was responsible for insuring the truck and the respondent paid for the tax and insurance. The appellant was a co-signatory on the company account. The last occasion that the appellant drove the truck was 5 April 2006. The appellant told her that a blower exploded in the truck and the appellant endeavoured to obtain a second hand blower. The appellant fitted two blowers but they were not suitable. The appellant was paid his wages at this time. Due to the fact that the truck was damaged and not in use no money was generated by the respondent. The respondent was due a refund from revenue and the company was operating on an overdraft at this time. The proprietor never received a salary from the company but it paid for her car tax.

She paid the appellant for sixteen weeks and she hoped that he would get the blower fixed. During the sixteen-week period that the truck was off the road the repayment of a lease cost €1,700 a month. At this time the sum of €51,000 was outstanding on the lease. The proprietor received a telephone call in July 2006 from the appellant that there was no money in the company account. The appellant asked about the blower. She told him it would have to wait until the respondent received the money from revenue and he could then repair the truck. The appellant asked what he should do and the proprietor told him to ensure that he was paid the money that he

was owed. The appellant was informed by e-mail in August 2006 to contact the respondent as the revenue money had arrived and this could be used for carrying out repairs for the respondent.

The appellant did not take up this offer and he asked for his P45. The proprietor wanted the blower fixed and there was a job for the appellant. The appellant did not return any of her telephone calls. The appellant parked up the truck and walked away. The proprietor felt very let down by the manner in which the appellant left the respondent.

In cross-examination the proprietor stated that she never received any written quotations from the appellant but she received verbal quotations. The appellant was a qualified mechanic and he knew what had to be done to get the truck fixed. The appellant was sure that he could get a second hand blower that would work. The appellant left the keys on the wheel of the truck and it took her a week and a half to get the truck back.

### **Determination**

The Tribunal are not satisfied that a redundancy situation existed. The Tribunal note that the appellant was paid for sixteen weeks and a further two weeks. The appellant was informed by e-mail in August 2006 to contact the respondent as the revenue money had arrived and this could be used for carrying out repairs for the respondent. The respondent gave evidence that the appellant did not take up this offer. The appellant did not accept the invitation and therefore it cannot be argued that the position was redundant and therefore the appeal under the Redundancy Payments Acts, 1967 to 2003 fails.

The Tribunal are somewhat disappointed with the manner in which the appellant's employment was dealt with by the respondent and in particular the company's failure to forward payslips, failure to supply a contract of employment and the delay in furnishing P.60's.

Because the appellant left his employment his appeal 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)

