

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
RP430/2006
MN557/2006

Against

Employer

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Halpin B. L.

Members: Mr J. Walsh
Mr O. Nulty

heard this appeal at Drogheda on 25th April 2007

Representation:

Appellant : Ms Maureen Finaly, Drogheda Citizen's Information Service,
1 Mayoralty Street, Drogheda, Co Louth

Respondent : No representation listed

The decision of the Tribunal was as follows:

Respondent's Case

The respondent is a sole trader operating as a potato farmer. The appellant was mainly employed as a tractor driver but also performed other duties on the farm generally focusing on the maintenance of machinery. Throughout 2004/05 the witness described the farming business as being in poor shape and was considering making some of his staff redundant. He employed twelve people and the appellant was the only employee adversely affected by that slow down in the business. On 22 December 2005 the respondent decided to lay-off the appellant for a number of weeks up to 1 March 2006. The witness verbally informed the appellant of that decision on 30 December 2005. A redundancy situation was discussed with the appellant at that time. The witness indicated to the appellant that his P45 would be forwarded to him shortly. The respondent then left on an overseas trip.

The witness acknowledged that documentation was not a feature of his working relationship with the appellant. The appellant was never furnished with a contract of employment or issued with

forms related with his lay-off. A P 45 did not issue in this case as a result of the appellant's request to go on sick leave. That request was conveyed to the witness's son during the respondent's absence in January 2006. On 7 February 2006 the witness contacted the appellant with a view to recommencing his employment a few days later. The appellant in turn indicated his unwillingness to return and again sought to be made redundant. Following a consultation with his accountant the respondent was unwilling to do this and informed the appellant of that decision. The witness maintained that there was work for the appellant from the middle of February onwards and that he did not terminate the appellant's employment.

Appellant's Case

The appellant commenced employment with the respondent in 1982 and had never been let go from that employment up to December 2005. He confirmed that he never received any terms and conditions of employment or pay slips from the respondent. The witness sought redundancy from the respondent on 30 December 2005 and later in January and February 2006. The respondent eventually told him that no such payment was due to him. During that time the appellant was told by a state agency that he was entitled to a redundancy payment based on his version of events.

The appellant did not accept that the respondent invited him to return to work in February 2006. He received two weeks' notice pay and was on disability benefit for two weeks only in January 2005.

Determination

The onus is on an employer to keep records and furnish its employees with documentation relating to their employment. There was no evidence that this was done in this case. This leaves the respondent very exposed to claims and appeals from employees. The Tribunal is satisfied that the respondent did not follow proper procedures in this case. Having considered all the evidence the appellant is awarded a statutory redundancy payment under the Redundancy Payment Acts, 1967 to 2003 based on the following:

Date of Birth: 10 July 1956
Date of commencement 15 June 1982
Date of Termination: 25 February 2006
Gross Weekly Wage: €460.00

The appeal under the Minimum Notice and Terms of Employment Acts 1973 to 2001 succeeds and the appellant is awarded €2760.00 as compensation for six weeks' notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

