

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
Employee

CASE NO.
MN95/2007

Against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr. M. Flood
Ms K. Garvey

heard this claim at Dublin on 21st June 2007

Representation:

Claimants:

In person

Respondent:

Mr Eddie Keenan, Construction Industry Federation, Construction House, Canal Road, Dublin 6

The decision of the Tribunal was as follows:-

Claimant's case

The claimant had been employed by the respondent since June 1992. From August 2006 a large number of employees were temporarily laid off. The claimant was told he was on temporary lay-off on 17th October 2006. On 29th November a meeting took place between the claimant, his union representatives, other staff members who had also been laid off on 25th August and the respondent. The respondent told the workers present that things were not looking good for the company. He apologised to the workers for the situation and said that the lay-offs would be indefinite and anyone who wanted to apply for redundancy could do so. The respondent said there would be no work in the foreseeable future. The redundancy was described as voluntary but the claimant did not accept that it was voluntary. He believed the

respondent had made him redundant, as an indefinite lay off was not the same as a temporary lay-off. The claimant received a cheque for his redundancy payment some time later. No payment in lieu of notice was made to him.

Respondent's case

The respondent asserted that the claimant had made himself voluntarily redundant due to lay-off and was, therefore, not entitled to payment in lieu of notice. The respondent operates in a very competitive environment and in August 2006 he found himself in the situation where he had to put 22 employees on temporary lay-off. He lost a contract on a job in Cork, which had employed 16 people. These employees had to be taken back to Dublin and put on jobs there. He then lost a contract suddenly in Dublin when a competitor undercut him. He then lost a third contract. He was confident that he would get jobs and the situation could change quickly in his business. The company had no history of lay-offs on this scale. As the weeks passed he began to get phone calls from staff on lay off and from the union wanting to know when they would be back working. He had to explain to them that there was no work at present but he hoped there would be. He did not want to make staff redundant, as this would be an additional financial burden on the company at a time when things were not good. He was close to losing his company at one stage. He responded to union pressure and attended the second part of a general meeting of laid off employees on 29th November 2006. At this meeting he said that anyone who wanted to do so could apply for redundancy. In response to questions at the meeting, he informed his employees that they would not be entitled to payment in lieu of notice if they applied for redundancy and signed the relevant form in this situation. He offered staff the alternative to stay on lay-off, as he was confident he would get work.

Of the 22 staff on lay-off, 18 chose redundancy and the other four came back to work with him around January 2007. All of the staff who chose redundancy did so voluntarily and signed the relevant forms acknowledging that they were not entitled to notice or payment in lieu of notice. He has since taken on more staff. The respondent did not write to his employees to explain the situation, however his accountant had been available in the office to answer any telephone queries. Under cross examination, the respondent agreed that he had told the meeting on 29th November 2006 that there was no work available for the foreseeable future.

Determination

The Tribunal has carefully considered the evidence adduced. The claimant and his colleagues were laid off in and around August 2006. The Tribunal does not doubt that a genuine lay-off situation existed. Up to twenty-two employees were laid off as work contracts unexpectedly dried up over a period from August 2006.

The Tribunal would be critical of the respondent company's failure to keep its laid off employees notified about what was going on and what their realistic prospects were. The legislation clearly states that an employee who has been laid off is entitled to look for voluntary redundancy after four weeks. This option was not made known to the claimant and his colleagues and, instead, the situation was allowed to drag on for three months – made all the more frustrating because there was no direct line of communication between the employer and employee.

Ultimately, and in response to union pressure, a meeting was called at the end of November 2006. At this meeting it was made clear that lay-offs would continue into the future as the company was trying to chase contracts.

Of the twenty-two employees, eighteen chose to take voluntary redundancy, which was the alternative open to them. The obvious disadvantage to an employee who chooses to take voluntary redundancy in a situation of lay-off is that that employee disentitles himself to work out a notice period or get paid in lieu. This posed a significant loss to the claimant, who had worked with the company for 14 years.

What the Tribunal has to ask itself is whether this lay-off was a genuine one and not some ploy on the part of the employer to avoid paying substantial notice entitlements where, in fact, a genuine redundancy existed.

The Tribunal is satisfied, on the uncontradicted evidence, that the company was going through difficult times and had lost good contracts and was desperately trying to compete for others. It is fair to assume that the company could not know if, or when, work would become available again. In taking this view the Tribunal is mindful of the four employees who held out for another two months and returned to the workplace when things looked up.

In calculating redundancy, the company did not include the period of lay-off. This is provided for under the Acts and no advantage or disadvantage arises in consequence of this.

The Tribunal has every sympathy for the applicant herein, but finds that he has been paid his full entitlement in the circumstances presented.

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)

