

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP18/2006

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Ms M. Sweeney
Mr J. McDonnell

heard this appeal at Cork on 27th March 2007

Representation:

Appellant :

Mr. Martin Leahy, SIPTU, Cork No.3 Branch, Connolly Hall,
Lapps Quay, Cork

Respondent :

Mr Tony Keating, Contracts Manager

The decision of the Tribunal was as follows:-

Appellant's case:

The appellant worked as a scaffolder for the respondent for ten years. Giving evidence he said that on Friday, 19 August 2005, during a conversation with the contracts manager, the appellant had agreed to go to a job in Midleton Distilleries the following Monday. The contracts manager then passed a comment that he was sick of the place whereupon the appellant said that he was only waiting for a telephone call to "get out of here". When the contracts manager asked him if he was serious he replied that he was and said that when the time would come he would see the director, J.D. In the event, the job in Midleton was cancelled.

On the following Wednesday, 24 August 2005, the contracts manager came to the yard with the

wage slips. The contracts manager gave the appellant his payslip and P.45 and asked if it was that week or the following week he was leaving the company. That was the last payment the appellant received. No member of management asked him to withdraw his notice.

In cross-examination the appellant agreed that he had offered to give back the P.45 that he had been given and that a new one would issue the following week. Later that day another scaffolder (NC) said to him, "The road you know is better than the road you don't know." When the contracts manager asked him where he was going he told him he had one or two options. The appellant said that he did not have "much mind" for the place at that time. There were lots of rumours going around that the respondent wanted to use sub-contractors and some employees were talking about him (the appellant). He came in to work on the Friday and Monday and felt "hard done by". He left work on the Monday to go to his trade union and he did not return to work after that. He started with a new employer two days later. He did not give in his notice on Friday 19 August 2005. He agreed that there was work available in the respondent company in late August 2005. He did not find alternative employment until after he had left the respondent.

Respondent's case:

The contracts manager in his evidence told the Tribunal that at around 08.00, before work started, on Friday 19 August 2005, the appellant approached him and said he was giving one week's notice that he was leaving. The contracts manager went to the employer and told him that the rumours, that the appellant was leaving, were true and that he had given his notice. When he asked the appellant if he had something lined up he replied that he had "one or two things". The employer did not want the appellant to leave because he was an advanced scaffolder and had long service with the respondent. The following Wednesday on the employer's instructions the contracts manager asked the appellant if he would change his mind about leaving and told him that they could tear up the P.45, which he had already received. The appellant refused, said he wanted to leave and confirmed to the contracts manager that he would be leaving the following week. There was no problem about destroying the P.45, which had already been given to the appellant, and issuing another one with the later date of leaving. As the contracts manager was talking to the appellant NC (another scaffolder) came along and encouraged the appellant to change his mind and remain with the respondent.

As the contracts manager understood that the appellant intended to work his week's notice he assigned him to a job in Ballincollig the following Monday. When the contracts manager telephoned the foreman in Ballincollig on Monday morning at 09.30 he was informed that the appellant had left the site that morning and had said to him (the foreman), "No hard feelings, I'm out of here".

The contracts manager then received a letter from the appellant's union representative saying that the appellant was sacked but the contracts manager told him that was not true and that the appellant's job was still available. The appellant, his union representative and the contracts manager attended a meeting. At this meeting the appellant said he was sacked and the contracts manager confirmed to them that the appellant's job was still available but the appellant did not want to return to his job.

In cross-examination the contracts manager agreed that there was nobody else present on 19 August when the appellant gave his notice but added that NC was present on 24 August when he tried to get the appellant to change his mind and remain on with the respondent. The contracts manager, the appellant and NC had worked together as a crew. There had not been a downturn in the

respondent's business. The respondent employs sub-contractors as required and always has some sub-contractors employed. The respondent had thirteen direct employees in August 2005, five of whom were advanced scaffolders but at the time of the hearing he only had four advanced scaffolders. He had tried to hire another advance scaffolder. The respondent has forty-eight employees including sub-contractors, twelve of these were direct employees whereas at the time of the appellant's employment there were thirteen direct employees. The appellant now works for a former director of the company who had started his own business; another former employee of the company also left to work for the same former director/employer.

NC told the Tribunal that when he returned to work on the Wednesday, 24 August, he had been told that the appellant had handed in his notice. The appellant later denied this and told him (NC) that was the first he had heard about it. The witness was present when the contracts manager tried to talk the appellant out of leaving on 24 August and he (NC) also tried to talk him out of leaving. He rang the appellant on the Tuesday and offered him a job with a colleague but the claimant told him that he had obtained alternative employment. There had been quite a lot of scare mongering going on about a downturn in the business.

Determination

There was a conflict of evidence as to whether the appellant resigned or was dismissed. Having considered the evidence adduced on the conversations that took place between the parties on 19 and 24 August 2005, the Tribunal is satisfied that the claimant was not dismissed from his position. The appellant left his employment of his own accord. Therefore, the appeal under the Redundancy Payments Acts 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

