

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
RP410/2006

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr T. Gill
Mr. T. Kennelly

heard this appeal at Galway on 30th August 2007

Representation:

Appellant(s): Mr. Michael Kilcoyne, Siptu, Forster Court, Galway City.

Respondent(s): In person

The decision of the Tribunal was as follows:-

Claimant's case.

In sworn evidence, the claimant said that he was employed to deliver goods, primarily beer. He worked five days per week. In June 2006, he heard that the respondent had lost a contract and he said that he was told that jobs would be lost. However, he also understood that it would be replaced by another contract. He met with the respondent who then informed him that the new contract would mean a significant amount of extra work but was worth less money and therefore he (the respondent) was not taking up the option on the contract. He stated that as there was no more work he returned the truck to the depot. He also said that approximately eight employees were involved in the delivery of beer.

The claimant said that he spoke to the respondent on a second occasion, and received payment for outstanding holiday entitlement but did not receive a redundancy payment. When he enquired about redundancy, he was informed that the company was 'not in it'. He was laid off. He asked for his P45 because he had received another job, working two days per week. He stated that the respondent

never reverted to him regarding work.

In cross-examination, the claimant confirmed that he had received a letter from the respondent regarding his temporary lay-off. However he claimed that, following a conversation between them, he understood that there was no work for him. He said he was never called back to work and denied the respondent offered him other work on containers. He agreed he was laid off for one month, but argued that he believed he was 'left off' and repeated that the respondent never called him back. He said that he 'knew when he wasn't wanted'. When asked how he knew there was no further work for him some two to three days after receiving form RP9, the claimant commented that 'he knew the lie of the land'.

In reply to questions from the Tribunal, the claimant said that he returned form RP9, as he was unfamiliar with bookwork, and by way of explanation said that he 'felt there was no work' for him with the respondent in any event. He confirmed that he obtained new employment one week after finishing with the respondent. Had he known that the respondent would obtain other work he said that he would have waited for it.

Respondent's case.

The respondent confirmed that the claimant called to him on Thursday, 26th July 2006, asking if there was any other work for him. He confirmed that there was but that the claimant wanted to work locally. The respondent said that the claimant asked for, and called for his P45. He confirmed that the claimant was an excellent worker, and there had always been good communication between them. He said that he had no reason to engage any other person as he had plenty of work to justify his retaining the claimant in employment. He confirmed that he currently employed twelve employees and repeated that the claimant asked for his P45.

In cross-examination, the respondent confirmed that he explained the temporary lay-off to the claimant. He denied that the purpose of issuing form RP9 to the claimant was to avoid paying him redundancy. He agreed that the claimant had undertaken long haul deliveries to Belfast, as well as to Dublin Port. He stated that he informed the claimant about the anticipated new contract work by letter. He also said that there were some contracts that were beyond the company's capabilities, which prevented him tendering for them. He said that the claimant informed him that, for reasons of ill-health, that the job no longer suited him and that he did not intend to return to work for the respondent. He maintained that position which, he said, explained why he did not contact the claimant at the end of the four-week period of lay-off. The respondent said that he was aware of the rules governing redundancy payments and, if paid, as well as the company's entitlement to claim a rebate of sixty percent. In conclusion, the respondent confirmed that the claimant was paid €450.00 per week and that his P45 issued on 13th July 2006.

In reply to questions from the Tribunal, the respondent said that the beer delivery contract was a significant contract to lose.

A **second** witness for the respondent, employed by the respondent from 2004 and who prepared wages, gave evidence. She confirmed that the claimant's salary was €450.00 based on his working a five-day week, composed of payment of €372.75 and an additional amount of €77.25 for time spent away from base. While she prepared the forms RP9, having sought advice from the Employment Rights unit, she said she had no input into the decision to issue notice of temporary lay-off.

Determination.

Based upon the evidence adduced at the hearing, the Tribunal finds that the claimant is not entitled to a redundancy payment under the legislation. Accordingly, the claim under the Redundancy Payments Acts, 1967-2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

