

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

CASE NO.

RP536/2006

Against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Cagney B.L.

Members: Mr R. Murphy
Mr. J. Dorney

heard this appeal at Dublin on 21st June and 18th September 2007.

Representation:

Appellant: Mr. Charlie Prizeman, TEEU, 5 Cavendish Row, Dublin 1

Respondent: Mr. Breffni O'Neill, Construction Industry Federation, Canal Road, Dublin 6

The decision of the Tribunal was as follows:

Background:

The representative for the respondent contended that the claimant commenced working for the respondent in 1984. At some time in 2004 the claimant made it clear to the respondent that he wished to be employed on a C45 basis. The management told him that he would be "worse off". The claimant contradicted this and insisted that he be on C45 and if he was not he would resign and work elsewhere. The company acceded to his request. All of the respondent's employees are directly employed so it was unusual to have someone on a C45 basis. The claimant never obtained a C2 and he was told to do this by the respondent. (A C2 is follow-on to the C45; until a C2 is issued or processed the respondent is obligated to retain the tax that the C45 holder would pay to the Revenue Commissioners. When the C2 is obtained by the individual the holder is fully responsible for his own tax and the remit of same to Revenue). The respondent told him that he would have to go to C2 or revert to being a direct employee. At a later stage the claimant left the company in disputed circumstances. He left the job he was working on in Trim, Co. Meath. The company found it difficult as the claimant had been the senior foreman and the company had ample

work.

The representative for the claimant does not accept this view. A director told the claimant that if he wanted to advance his career then he should enter into a C2 arrangement. The claimant accepted this position although he was concerned about his twenty-two years of service. A director assured him that if things did not work out then his job would still be there. At a later time the company told him that his job was terminated. The representative alleged that the claimant was “duped and manipulated” by the company.

Respondent’s case:

The Tribunal heard evidence from a director of the respondent. He explained that the company is an electrical contracting company with forty to fifty employees. Of these approximately half are electricians. Only one of the workers was on a C2 for the past two to three years. Two workers were on C45. The company did not encourage this practice, as the company policy is that “employees are employees”.

The witness explained that the claimant commenced with the company in October 1984 and served his apprenticeship. He was promoted to foreman. Towards the end of 2004 he became aware that the claimant had a desire to become employed on a C45 basis. A co-director had told him this. It was unusual for their employees to work on anything other than a P.A.Y.E. basis. The company did not encourage workers to be on C2 or C45. He also explained that the claimant was very competent, a senior foreman and they “did not want to lose him”. The claimant had previously wanted to leave the company and they gave him a company van. Another time that the claimant had wanted to leave they paid him €1.50 per hour above the industrial rate of pay.

In late 2004, when he was made aware of the claimant’s wish he put a proposal to the claimant. A number of weeks passed and in late January 2005 the claimant indicated he was happy with the proposal. The claimant had no entitlement to holiday pay under the deal and was no longer under the pension scheme. A new hourly rate was agreed with the claimant. It was agreed from the beginning that it would lead to the claimant obtaining a C2. The claimant never obtained a C2.

The company had a number of projects planned and they wanted the claimant to obtain a C2 or to go back to being a direct employee. The claimant went on holidays in August 2006. On his return the claimant left the employment of the respondent company of his own volition. The contracts manager had to take over the claimant’s work.

Under cross-examination, the witness agreed that the information regarding the contracts manager was “second hand”.

The Tribunal asked the witness for clarification of matters, which he did, and he further elaborated. The claimant worked a set number of hours because that was what they agreed. The company needed the claimant to do a minimum number of hours. He was answerable to the company for his work because they in turn were answerable for his work. The claimant sent invoices to the company. The company supplied all the materials. He did not get travel allowances after he was employed on a C45 basis.

The Tribunal heard evidence from the contracts manager. He had heard the claimant wished to go

on C45 and he told the claimant that it was not a good idea. The claimant told him that he wanted to, “move on” and it was the only way to get more money. He understood that it was the claimant himself who was the instigator. The claimant went on holidays and he returned. He told the claimant that he could not remain on C45. The following day the claimant told him he had obtained a job elsewhere. The contracts manager told him that they had plenty of work for him.

The contracts director gave evidence. His job was to hire staff, liaise with consultants, and look after contracts and sites. The company had never made an employee redundant. He had a very good working relationship with the claimant. He had a meeting with the claimant and the claimant indicated to him, on advice from his friends that he would earn more money if he was employed on a C45 basis. He explained to the claimant the advantages and disadvantages of being employed on this basis. The claimant told him that if did not allow him to be employed on a C45 basis he would leave the company. In February 2005, he sold the company van to the claimant. He told the claimant that the company wouldn't be paying his pension for him and that he would not receive any holiday pay. The claimant indicated to him he had engaged an accountant.

The witness explained that he received a phone call from the company informing him that the claimant was leaving on 11 August 2006. He was totally shocked and somewhat annoyed but did not contact the claimant as he had some personal problems of his own. The claimant had been working on a site in the country and that work was at a critical stage and the work fell to others to complete. Prior to completion of the work on the current site he informed the employees, including the claimant, that further work was forthcoming on other projects. He denied the claimant was made redundant. He would willingly re-employ the claimant.

Claimant's case:

The Tribunal heard evidence from the claimant. He told the director that he was looking for more money and they discussed sub-contracting work to him. He went on C45 and he continued to do the exact same work and the same hours. There was no mention of having to go on to C2. His job was the same as it had been.

When he returned from holidays the contracts manager informed him that another director indicated that there was no more work for him and that they were terminating his employment the following week. He was in shock as he had been working there for twenty-two years. Not one of the directors phoned him. Another employee would confirm this and claim to have been treated similarly.

He explained that he had to register for VAT because he earned more than €25,000.00 per annum and he himself did his weekly invoices. He went on C45 to earn more money. The claimant said that prior to him going on holidays, the director had said there was plenty of work available. The contracts manager dismissed him.

He told the Tribunal that while he was on holidays he realised his C45 wasn't working out for him. On 11 August 2006 he was the last person to leave the site, as he wanted to leave everything in order. He said if he were offered his job back he would not take it.

An employee gave evidence. He had a very good working relationship with the company. On 11 August 2006, both he and the claimant were told by the contracts manager that there was no more

work for them. He said that three to four weeks earlier the director told them there was plenty of work. He told the Tribunal that he did not contact the director at that time because he knew that the director had personal problems.

Determination:

The Tribunal was asked to determine whether the claimant had been dismissed by way of redundancy. Having considered the evidence in this case, the Tribunal recognises that there are contradictory explanations with regard to the circumstances which led to the claimant's relationship with the respondent company ending, as it did, in August 2006. The Tribunal is satisfied that while some evidence adduced could suggest that the respondent company may indeed have dismissed the claimant, on balance it did not support the claim that a dismissal by way of redundancy occurred.

Accordingly, we do not find that the claimant was dismissed by reason of redundancy. Therefore, the claim under the Redundancy Payment Acts 1967 - 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)