

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

MN524/2006
RP422/2006

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms R. O'Flynn

Members: Mr. M. Forde
Mr J. McDonnell

heard this appeal at Cork on 26th September 2007

Representation:

Appellant :

In Person

Respondent :

Mr . Barry Hill, 14 Pic-Du-Jer Close, Ballinlough Road, Cork
City, Co. Cork

The decision of the Tribunal was as follows:-

Respondent's case:

The respondent ran a construction maintenance business and had a number of contracts in Cork one of which was based at the Victoria South Infirmary Hospital. The claimant had been based at this hospital for eleven years. At the end of May 2006 he advised his employees that he was planning to leave the hospital as soon as possible. He agreed with management that he would stay there until the holidays were complete and he would finish the work on hand but would not take on additional contracts. On 31st May 2006 the claimant went on holidays and prior to this the respondent told the claimant to report to the Beamish Crawford site (hereinafter referred to as B and C) on South Main Street on his return from holidays. The maintenance manager at the hospital requested that the claimant be allowed to return to the hospital and to remain there until the end of the contract.

The claimant returned from holidays and asked the proprietor what was the story. The claimant said that he was getting a job with a builder in the hospital. The respondent remained at the hospital for a further week. The claimant was asked if he had changed his mind and he said he was staying with the other builder. Both men shook hands and the claimant started work the following week with that builder. The claimant did carpentry and general maintenance and he was offered the same type of work at B and C where he would be working in offices instead of wards. The claimant used to start at 7am and would sometimes work up to 8pm. The standard hours were 8.30am to 5pm. At B and C the claimant would work the same hours but could start at 8am. He was also to receive the same pay. The respondent had five employees on the site at the hospital and the claimant and another operator plus two sub-contractors were to move with him to B and C. He was leaving three employees go as he had no work for them and of these one was entitled to and was paid redundancy. The offer of work at B and C was long term and the respondent was still based at this site as of the date of this hearing.

In answer to questions from Tribunal members the proprietor said that the claimant started at 7am in the hospital and worked late to close the car park and he was paid for these extra hours. There was overtime on Saturdays at B and C. The claimant might start at 7 - 7.30am in the hospital at their request. His start time at B and C would be 8.30am and he would get paid travel allowances.

Claimant's case:

The respondent spoke to the claimant and said he had work for him at B and C. He was told that he would not necessarily be at that site at the time. It suited the claimant to know where he would be based and he could park his car at the hospital whereas he would not have parking at B and C. He was not assured at any stage that his work would be office based but rather that he would be looking after Work Permits. His work at the hospital was very different. He was told the respondent was ceasing its work at the hospital and he had three days to make up his mind about the B and C offer. When he returned from his holidays he had to make up his mind.

His disagreed that his pay would be the same at B and C as he would work shorter hours and while there would have been some overtime he worked longer hours at the hospital and therefore his earnings would be higher. He agreed that he told the respondent he was staying at the hospital as he had been offered work by a builder at the hospital. He was laid off by the respondent at the weekend and started with the builder on the following Monday or Tuesday. He continues to work for that builder.

In answer to questions from Tribunal members the claimant said that at the time he was offered alternative employment by the respondent at B and C he was to have an interview with the builder. He was sixty one years of age at that time and had recovered from a heart attack. He considered the job at B and C as being unsuitable as he saw himself loosing financially. The claimant felt he had a genuine case and that if he found a job at the hospital he would stay there. As far as he was concerned there would have been more manual work at B and C. He was supervisor at the hospital and would be one of the lads if he moved to B and C. He felt his relationship with the respondent was starting to break down. He would not necessarily be working at B and C all the time and the work would be different. He could not have seen himself going to B and C and would have found it hard if he moved from the hospital therefore he refused the offer from the respondent.

In cross-examination the claimant said that at the commencement of his employment with the respondent he was based at B and C and he then transferred to the hospital. He agreed that the

respondent kept asking him in June 2006 to transfer with him to B and C. On 30th June 2006 when the respondent again asked him for the final time to move to B and C he had got the other job with the builder in the hospital but they had to sort out the financial side of the offer. Being allowed to park his car at the hospital he felt was not a perk but an entitlement. He did not raise with the respondent the issue of potential loss of earnings at B and C. At the hospital he received a foreman rate of pay plus bonuses

Determination:

Having heard the evidence, the Tribunal is satisfied the Claimant was offered suitable alternative employment by the Respondent, and that his refusal of such offer was unreasonable, having regard to all of the circumstances. Accordingly, the appeals under the Redundancy Payments Acts, 1973 to 2003 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

