

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
Employee

CASE NO.
RP250/2006
MN314/2006

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL
Members: Mr. M. Forde
Mr D. Mc Evoy

heard this appeal at Cashel on 28th June 2007

Representation:

Appellant: Ms Cliona Cleary BL instructed by Brian D. Hughes & Co.,
Solicitors, "Longmall", Slievenamon Road, Thurles, Co. Tipperary

Respondent: Mr. Frank Drumm BL instructed by Ms. Fiona Roche,
Roche & Co., Solicitors, 34 Vevay Road, Bray, Co. Wicklow

Background:

The Appellant's case:

1. The Appellant was in continuous employment with the Respondent company from in or around 1986 to 27th of May 2004. The Appellant was employed as a warehouse manager at the Respondent's warehouse complex in Urlingford, County of Kilkenny.
2. The Respondent carries on the business of Veterinary pharmaceutical sales and has its principal place of business situated at Clones Road, Monaghan, County Monaghan.
3. In or around the end of February, 2004 the Respondent company informed the employees of the Urlingford warehouse that the warehouse was being closed down on 30th of April, 2004 and the business being relocated to the new warehouse depot in Monaghan.
4. The Respondent offered the Appellant a new contract of employment as a sales representative. This position required the Appellant to travel south east Dublin, Kildare, Wicklow, Laois, Carlow, Wexford, Waterford and Tipperary and was a completely different job to his previous job as a warehouse manager. The said offer of employment was not a suitable offer of alternative employment. The Appellant was acting reasonably in refusing to accept same. The Appellant reserves the right to furnish further grounds in regard to the foregoing at the hearing of this matter.
5. The Appellant refused the said offer of a new contract of employment and his contract of employment was accordingly terminated by his employer by reason of redundancy.

6. The Appellant claims that in the circumstances, his contract on employment was terminated and the Appellant's dismissal attributable to the following reasons:
 - a. the fact that the Respondent ceased to carry on the business of warehouse for the purpose for which the Appellant was employed and / or
 - b. the fact that the Respondent ceased to carry on the warehouse business at Urlingford;
 - c. the fact that the requirements of the Respondent's business for employees to carry out work in their warehouse at Urlingford has ceased;
 - d. the fact that the Respondent had decided to carry on the warehouse business in Monaghan and to relocate that warehouse facilities there and the business would be carried out by other employees/.
7. All of the employees of the Respondent company, save the appellant were paid an agreed redundancy payment.
8. By letter dated the 19th of April 2006 the Appellant applied for a redundancy payment from the Respondent and the Respondent has failed, refused and neglected to pay same.
9. In the circumstances the Appellant is entitled to the agreed redundancy payment.
10. The Appellant will show reasonable cause within the meaning of section 24 of the Redundancy Payment, Act, 1967 at the hearing of this appeal. The following grounds will be relied upon: the Appellant was never offered any redundancy nor was the Appellant served with any redundancy notice. The Respondent failed to comply with any of the provisions contained in the Redundancy Payment Act, 1967 putting the Appellant on notice of his statutory entitlements. The Appellant was not aware of his statutory right to redundancy until in or about November 2005.

The Respondent's case:

Prior to the closure of our Urlingford premises (the Appellant) in discussions with our sales manager made it clear that he wished to take up the position of Veterinary sales representative, a position he held from 1990 until taking over the role of "caretaker" store manager in 1994.

1. Following the closure of the Urlingford premises the Appellant assisted with the re-organisation at our Monaghan location, this he agreed to do for a number of weeks before taking up his position as Veterinary sales representative.
2. During the week of May 2004 the Appellant contacted (SG) and informed him that he had been offered another job with a competitor company, with a much better salary and better career prospects. He indicated that unless the Respondent were prepared to offer him a similar salary he would be taking up the offer.
3. Following various discussions with the Appellant the management decided it could not meet the salary that was being offered, as to do so would be totally out of line with existing pay scales within the company. When informed of this decision the Appellant tendered his resignation (copy attached) with the company.
4. I personally (the author) had a lengthy telephone conversation with the Appellant prior to his departure and he emphasised the fact that he was sorry at having to leave the company as he was always very happy working there etc., and he hoped I appreciated this was a very difficult decision for him, but he felt that the offer was too good for him to turn down. He did emphasise to me that the company could have matched the package been (sic) offered to him by the other party, and the fact that, had he known this job opportunity was coming up he would have been better off to have taken redundancy.
5. The position, which the Appellant was to take up, was subsequently filled by a new member of staff.
6. It can be confirmed that four people in the company who were directly involved in the closure of the Urlingford operation that the Appellant was informed about all aspects of the

decision, he was part of the process and was clearly committed to continuing his employment with the company until receiving the offer from a rival company.

7. Our company is of the view that this is a spurious claim, and out of character for the Appellant, we feel that the company should not have to incur costs defending this claim, where clearly he tendered his resignation and now feels he should be awarded redundancy.

Letter of resignation:

“It is regret and after long consideration I have decided to accept the offer made to me by (named company). I do accept the reasons given to me as to why this offer could not be afforded to me by the company (Respondent). The package on offer had a major part to play but was not the only deciding factor. I would like to express my thanks to all the staff at (the Respondent) for their help and support throughout my eighteen years with them. I would like to wish (the Respondent) and her sister companies every success in the future. Where does time go, they say time flies when you are enjoying yourself, that’s one thing I can say about my time with (the Respondent), I have enjoyed my years working there and have gained much experience in my different roles within the group. I would also like to say that for any reason over the next number of weeks if I can be of any help I am just a phone call away. My wish for one and all is happiness and health over the coming years.”

Appellant’s case:

The Tribunal heard evidence from the Appellant. He was asked by his representative to explain why his appeal was not lodged within the 52 week period.

He explained that in relation to the closure of the branch in Urlingford he was the only person offered a new position. The other employees were told in a private meeting in Portlaoise about the redundancies. His employer offered him another position and he accepted the offer. He changed his mind about this and informed his employer. He was not told about his statutory right regarding redundancy. He believed at the time that he was not entitled to redundancy because he was offered another position with the Respondent. The position that he was offered he subsequently “turned down”.

Some time later in or around January 2005 he was at a seminar. He met a former work colleague who told him that he should “look into” whether he would have been entitled to or been offered redundancy. He then sought advice on the matter.

The Appellant further explained that there was no human resource section in the Respondent company; there was no trade union in the company and “most negotiations done one to one with management”.

The Appellant told the Tribunal that he was not informed of redundancy at any stage. He was aware that there were redundancy talks with other staff but he was not offered to be involved in the talks. He was never made to feel by the company that he was entitled to redundancy.

Cross-examination:

The appellant explained that he had two conversations with a senior person in the Respondent company and these conversations were to do with him changing his mind about an offer he had from a competitor company. It was put to the Appellant that he was told that he would not be made redundant and that he would be offered “a job”. The Appellant explained that he told Mr G some

weeks later that he would take the job.

It was put to the Appellant that he got a better offer of employment from a competitor company. The Appellant explained that Mr G asked him if he had accepted an offer from another company and he told him that he had.

The Appellant agreed that he had already accepted a job offer from a competitor company when he spoke to Mr G. The Appellant further explained that he saw a job offered in another company. He went to interview and was offered and accepted a job in the other company. He then informed Mr G of this. Mr G asked him if he had accepted the offer from the other company and he told Mr G that he had accepted. After this he had two meetings with Mr G who tried to change his mind.

The Tribunal asked the Appellant if it was the case that there was nothing Mr G could have done i.e. that he was going to leave. The Appellant replied, "more or less, he asked me if there was anything that they could do to change my mind and I said No". "If they had made a serious offer I would have considered it".

The Tribunal asked the Appellant if the Respondent offered him alternative employment and he agreed that they did. He was asked if he was interested in the job rather than redundancy and he replied, "yes". When asked if the offer was a reasonable offer he explained, "in the context of no job it was a suitable offer, it was a shock so that's why I accepted".

In response to questions from the representative or the company regarding offer of employment the Appellant replied, "I made it clear I was going I had better opportunity with new company".

The Appellant explained that he did not feel he was entitled to redundancy as he received a job offer from the Respondent. It was put to the Appellant that at no time was he excluded from redundancy talks. He replied, "He made me a job offer and to keep it quiet, next I was not included (in first redundancy talk meeting) I was manning the phones, the next meeting I was not present. I was aware of discussions going on I was excluded by taking job offer". When asked if none of his colleagues told him he replied, "No because why would I show an interest in redundancy there was a coolness because some of them thought that I had a prior knowledge, I knew that there was a redundancy package talks taking place".

The Tribunal asked the Appellant about the work he did as a warehouse manager and the work he had been offered by the Respondent.

Determination:

It is clear to the Tribunal after hearing all the evidence proffered before it that the Appellant's claim was out of time. The evidence was that after a long number of months after the cessation of his employment the Appellant thought that he may have a claim. The Tribunal is satisfied that this occurred as an afterthought, having left the Respondent company to take up alternative employment; hence the long delay before the Appellant lodged the claim. Therefore the appeal under the Redundancy Payments Acts, 1967 to 2003, fails.

The Tribunal in the circumstance will not extend the time to allow the Appellant to bring his claim as no reasonable cause was shown to the satisfaction of the Tribunal to do so.

The appeal 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)