

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

CASE NO.

RP29/2008

Against

Employer

under**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr B Garvey BL

Members: Mr M Noone
Mr J Maher

heard this appeal at Dublin on 18th April 2008.

Representation:

Appellant : Ms. Yvonne Walsh, O'Leary Maher, Solicitors, 191 Howth Road, Killester, Dublin 3

Respondent: Mr. Peter O'Brien B.L., instructed by Ms. Anne Marie James, KirwanMcKeown James, Solicitors, 22 Kildare Street, Dublin 2

The decision of the Tribunal was as follows:-

Respondent's Case:

The Managing Director gave evidence. The respondent employed sixty people, which included apprentice electricians. The appellant was a friend of his daughter and the respondent initially employed him as an assembler. It was the responsibility of the two Production Managers to make a selection from the assembler grade to progress to an apprentice electrician. The apprenticeships usually took four years but could take as long as five years dependent on whether the apprentice had to repeat exams. The company has then four weeks to terminate the apprentices' employment. The appellant completed his apprenticeship in four years. His period of grace expired 19th November 2007. He did not have to repeat any of his exams. The appellant's paperwork was completed as soon as he completed his apprenticeship.

As the appellant's four week period of grace ended so close to the busy Christmas period, the appellant was informed that he could stay until the company closed for Christmas holidays. The appellant was paid up to Christmas and he also received his Christmas bonus. The Managing Director regarded this as a gesture of goodwill on his part.

About three days before the Christmas holiday break the Managing Director met the appellant together with the two Production Managers. At that meeting the appellant contended that he was entitled to a redundancy payment. The Managing Director indicated that no redundancy existed.

Under cross-examination the Managing Director said he had constant interaction with the appellant. He left the day to day running of the workshop to the two Production Managers. He explained that the company policy was that apprentices were let go on completion of their apprenticeships. In the last eight years all apprentices on completion of their apprenticeships left the respondent company.

The first Production Manager gave evidence. He shared responsibility for the job with the second Production Manager. He explained the apprenticeship system and the custom of the respondent not to retain apprentices after the termination of their apprenticeships and that this was also conveyed to the appellant at the beginning of his apprenticeship. A FAS representative visited the company and explained the four-year apprenticeship programme to all the apprentices. The appellant was given a start date for his apprenticeship as 22nd October 2003.

In September 2007 the appellant sought a pay increase and was advised that he was not due an increase in pay until he completed his apprenticeship. At that time the appellant was advised that he would be let go at the end of his apprenticeship. The first Production Manager believed the appellant fully understood this.

In December 2007 the appellant, together with another apprentice colleague made enquiries from the first Production Manager concerning their entitlements. The appellant was informed that he was not entitled to a redundancy sum.

Under cross-examination, the first Production Manager said he never told the appellant that he was due eleven weeks redundancy payment. It was the Managing Director's decision that the appellant would not be retained after his apprenticeship.

The second Production Manager gave evidence. He was responsible for the apprentices. The appellant enquired in September if he could move to the electrician's rate and was told he would have to wait until he completed his apprenticeship. He signed off on the appellant's apprenticeship. The appellant enquired if he was being retained after the completion of his apprenticeship. The second Production Manager said that he would have to talk to the Managing Director. In November 2007 the second Production Manager informed the appellant that he would not be retained after the completion of his apprenticeship but that the Managing Director said that, as it was so close to the Christmas period he could stay until the Christmas holiday break.

Under cross-examination the second Production Manager denied he forgot to tell the

appellant that he was being let go at Christmas. The company closed for Christmas holidays on 21st December 2007.

The Payroll and Administration Officer gave evidence. The appellant was a friend of her daughter. The appellant had enquired from her if he was being let go on the completion of his apprenticeship. She thought he probably would be but told him to talk to both the Production Managers. In the autumn, her daughter told her that the appellant said he intended emigrating to Australia at Christmas. The appellant had asked her to enquire from the Production Managers if he could be kept on until Christmas time, as he needed the money. When the Managing Director decided to keep him on until Christmas she understood the appellant was delighted with this arrangement as it would have been difficult for him to secure alternative employment before Christmas.

Under cross-examination the Payroll and Administration Officer believed the appellant was always aware that he was not being retained on completion of his apprenticeship. At Christmas she heard that the appellant was not going to Australia until the following March. She could not recall a conversation with the appellant saying that she was sorry he was being let go.

Appellant's Case:

Upon the appellant's completion of his apprenticeship in October 2007, he enquired several times during that month if he was being let go and was continually told by Management that they would get back to him. It was on 11th December 2007 that the Payroll and Administration Officer said to him and his apprentice colleague, in passing, that she was sorry they were going. On that day also the appellant and his colleague spoke to the first Production Manager whose understanding was that they already knew they were being let go when their apprenticeships were completed.

The appellant thought he was due a redundancy sum and was told to talk to the Managing Director and the two Production Managers.

On the 12th December 2007 the appellant and his apprentice colleague called to the office and were informed that they were being let go at the Christmas holiday break and would not be re-employed. His colleague was informed that he was not due any extra money and the appellant was told to talk to the Payroll and Administration Officer about his entitlements. He was very grateful to be retained after the completion of his apprenticeship.

Under cross-examination the appellant said it came as a bit of a shock to him when he was informed on 11th December 2007 that he was finishing for good at Christmas. His trip to Australia planned for Christmas had fallen through. The full decision of him being let go was only communicated to him on 12th December 2007.

The appellant's apprentice colleague gave evidence. He received his phase 7 results in January 2008. He confirmed it was on 11th December 2007 he and the appellant were first informed that they were being let go on completion of their apprenticeships and this was done in passing in a conversation with the Payroll and

Administration Officer.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal is satisfied that the appellant was informed at the commencement of his four-year apprenticeship that he would be let go on completion of his apprenticeship. It was common case that the appellant's apprenticeship ended on 22nd October 2007. According to company practice he would have been let go within four weeks of that date. However, as a gesture of good will on the part of the Managing Director the appellant was retained until 21st December 2007, when the respondent closed for Christmas holidays. The Tribunal is satisfied that no redundancy situation existed within the company. Accordingly, the Tribunal finds the appeal under the Redundancy Payments Acts, 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

