

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.

Employee

RP379/2007

Against

Employer

Under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal

(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. R. Prole  
Mr. P. Woods

heard this appeal at Dublin on 7th December 2007

Representation:

\_\_\_\_\_

Appellant(s): Mr. Karl Byrne, SIPTU, Liberty Hall, Dublin 1

Respondent(s): Company Representative

The decision of the Tribunal was as follows:-

**Respondent's Case**

KT on behalf of the respondent, an employment agency told the Tribunal that the appellant started work in 2003 on a project in Clondalkin. The appellant was a skilled

labourer and he undertook work on a project for three to four years. About a week before the project concluded the contractor that the appellant worked for informed the respondent that the project was due to conclude. The function of the respondent was to assign new projects to the appellant. There was a downturn in work for four or five days and the appellant would start another assignment when work became available. KT contacted the appellant but he did not answer his telephone and he left several messages for him. Workers moved from agency to agency and the respondent did not chase people. The appellant was offered work on 21 March 2007. The appellant did not answer his telephone calls in relation to a job in Carlow. On 5 April 2007 the appellant telephoned the respondent looking for work but there was no work available. The appellant telephoned JD the operations manager a few days later and requested a letter for social welfare indicating the date when he last worked. The respondent made the union aware that it endeavoured to contact the appellant on a number of occasions. He felt that he was obliged to compile a letter as he felt that the appellant was going to ask for redundancy even though he had been offered work on a number of occasions. A meeting was convened on 26 June 2007. The respondent informed the union that it tried to contact the appellant on a number of occasions but he had not answered the calls and he wanted a redundancy payment. The respondent endeavoured to retain employees.

KT received a letter from the Employment Appeals Tribunal on 13 August 2007. The appellant worked very well on the job and KT thought that some locations did not suit him. The respondent did as much as it could to provide work for the appellant. The appellant was an employee and all employees were not given contracts and staff came and went. The nature of the construction industry was you got paid if placed. If there was no work available in the respondent there were no restrictions on employees in gaining employment elsewhere. An employee may leave a site and the respondent may not have contact with him again and it was quite a loose arrangement. The respondent paid the rates as set down by the registered employment agreement for the construction industry. If the appellant worked for another company he may undertake duties that required less skill than when employed by the respondent. He reiterated that the appellant was an employee of the respondent and he received a P60, PRSI and holiday pay.

In cross-examination asked how he issued work to employees he responded that it depended. Approximately one thousand undertake work for the respondent and he would be made aware if an employee finished an assignment on a particular day. The respondent did not have procedures in place for lay offs. The appellant had come off a job after three years and the respondent did not have a job for him. The appellant sought a letter from the respondent for social welfare and the respondent had positions available. Employees moved on to other projects and did not inform the respondent and he did not have a reason to issue a lay off. The respondent had an abundance of unskilled workers and the appellant was fairly skilled. The respondent endeavoured to contact the appellant and he chose not to answer the calls.

### **Appellant's Case**

The appellant told the Tribunal that he was employed with the respondent for six years as a ground worker and he was covered under the registered employment agreement. He worked in various locations; he did not receive terms and conditions

of employment. He was not given procedures and he was not informed orally or in writing of lay offs. He last worked with the respondent on the 21/22 March 2007. He contacted the respondent the previous week. He was constantly in contact with the respondent and he was laid off on the Saturday before Easter. He stated that he never received holiday pay with the respondent and that he had to fight for it. The procedure in place when he was employed with the respondent was that both the respondent and the appellant contacted each other. The respondent did not inform him that he was on temporary lay off. He did not receive an RP9 form. He contacted his union to find out what was happening after he received his holiday pay for Easter. He spoke to the operations manager and he did not know what temporary lay off was. The respondent did not offer him alternative employment. He next contacted his union who advised him that he could get temporary lay off notice. He had no money at the time, he completed a redundancy form and he received a letter in July 2007 from the operations manager. He had to return to the union and he could not claim benefit. After he was unemployed for fourteen and fifteen weeks he received a call from the union. He is now self-employed. He was out of work for six months or more, he did not obtain social welfare or temporary lay off.

In cross-examination asked who he contacted in the wages department he responded that he got no response. He telephoned the office, he received no response, and he left his name and address. He spoke to the receptionist in the office and no one answered his telephone calls, he never got to speak to anyone over a five/six week period and he then spoke to the operations manager. He told the operations manager that he was out of work and he asked if there was work available. If the respondent had work he would have taken it. Asked how many times he contacted the operations manager he replied once. He disagreed that the respondent left messages on his telephone. He was not aware of work being undertaken on the Carlow bypass and he tried to obtain work in various sites and locations. After fourteen weeks had elapsed he was still out of work and he did not claim social welfare and he had no income. Asked when he was offered a job why he did not take it he replied he could be working for two weeks and be back in the same situation again.

There was no animosity between the appellant and the respondent at that stage. Over a fourteen-week period his calls were never returned. Something was going on that he was not aware of and there was work available when he got the union involved. He was paid a travel allowance at a standard rate per mile. He has been self-employed since August/September. He worked a couple of days in the last three weeks for which he earned €600 to €700 in total. He is living on his savings and he has a brother who is working.

Asked if he had his mobile phone records he replied that he needed a court order to get his telephone records. The appellant stated that he was going on six weeks leave.

**Determination**

On the evidence presented to the Tribunal the appellant's case under the Redundancy Payments Acts, 1967 to 2003 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)