

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO: RP155/2007

Against

Employer

Under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T Ryan

Members: Mr J. O'Neill
Mr J. Moore

heard this appeal at Dundalk on 29th January 2008

Representation:

Appellant: Ms Alison Quail, Alison Quail & Co Solicitors,
31b Irish Street, Ardee, Co Louth

Respondent: Mr. Richard McDonnell, Richard H. McDonnell, Solicitors,
Market Square, Ardee, Co. Louth

The decision of the Tribunal was as follows:

The claimant was employed as a painter and decorator by the respondent from 24th February 1992 until 14th April 2006.

Claimant's case:

In evidence the claimant said that towards the end of 2005 work began to slow at the building site where he was working. His employer had only one contract and as the developer was bringing in some pre-finished items there wasn't as much painting work to be done. When the claimant arrived at the site on 14th April 2006 his employer told him there was no work and that he was letting them go (the claimant and two others) and that he would contact him when there was work available. The claimant was offered two houses to paint in Ardee by a different builder which he accepted. While doing that work the respondent contacted him for work which he told he was unable to do. The claimant also did other jobs for a relative during this time. The claimant did not receive any payslips and only received a P60 once during his employment. His accountant sought his P45 in May.

There was conflicting evidence concerning communications between the parties. The claimant said he called to the site twice in April and May 2006 looking for work, which

the respondent refuted. The claimant said the respondent phoned him five or six times during the year and that he spoke to the respondent on these occasions, the respondent also refuted this and stated that he couldn't contact the claimant to notify him of work.

Respondent's case:

The respondent claims that he never told the claimant to go home. Since January 2006 the claimant had only made himself available for five weeks work. The claimant never came to the site looking for work. The claimant said to him that he was doing 'bits and pieces'. There was a 'valley period' in April but he never wanted to let the claimant go, he didn't let anyone go until later in May. In January he had been let down by the claimant who had said he would complete a job but then never showed up. The respondent tried to contact the claimant in May to offer him work, but was unable to contact him. The respondent called to the claimant's house and spoke to the claimant's father who told him that the claimant had gone to the theatre in Dublin, he asked for the claimant to contact him. The claimant refutes that this happened in May, but rather in January and he had contacted the respondent on that occasion.

The respondent had to take on an extra person to replace the claimant and that person stayed until Christmas. The respondent will probably now offer redundancy to the two other employees. If the claimant had stayed working with him he would be offering him redundancy also. But the claimant had 'drifted off' since January 2006.

Determination:

There was conflicting evidence heard in this case. The Claimant gave evidence that he contacted the respondent on a number of occasions seeking work but that none was available. The respondent gave evidence that he had work for the claimant, had tried to contact him a number of occasions including calling to his house, but found it difficult to contact him. The Respondent gave further evidence that when he finally made contact with the claimant and offered him work the claimant failed to turn up for the job. He further gave evidence that the Claimant's position was not redundant and that he even taken on another person to do the claimant's job. The Tribunal is not satisfied from the evidence given that a redundancy situation existed in this case. Therefore the claim under the Redundancy Payments Acts, 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)