

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

RP215/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. E. Handley
Ms. A. Moore

heard this appeal in Dublin on 5 June 2008

Representation:

Appellant(s):

In person

Respondent(s):

Managing Director,

The decision of the Tribunal was as follows:-

The appellant's form lodged with the Tribunal stated that his employment with the respondent commenced on 20 April 2005 and ended at 8.05 a.m. on the morning of Monday 21 May 2007 when he was told that there was no more work on his site but that he was to ring the respondent's office at 11.00 a.m.. When he rang the office he was told by the secretary (hereafter referred to as S) that he was being let go. When he asked her about redundancy he was told that she had just counted that he had over 104 weeks' service and that he should ring the proprietor (hereafter referred to as P) who said that the respondent was letting him go. However, when the appellant mentioned redundancy P told him that the respondent was dismissing him. The appellant believed that this was done in order that the respondent would not have to pay redundancy given that, in the weeks before and after, the respondent had let people go as the work was slowing down. However, some of these people were not entitled to redundancy because they were not employed long enough. Finally, the appellant stated that the respondent had paid him for two weeks in lieu of notice and that this would not have occurred if he had been dismissed.

The respondent's notice of appearance stated that the appellant had been dismissed "due to misconduct, not complying with the terms of his contract of employment" after he "had received several verbal warnings and two written warnings (copies attached)". The appellant had been employed as a qualified plumber working on a respondent site in Citywest and had been required to have the appropriate tools to carry out the duties assigned to him in an efficient manner. In the week leading up to 21 May 2007 a foreman (hereafter referred to as F) spoke with the appellant as he did not have the necessary tools to carry out his duties i.e. the installation of gas fires. F instructed the appellant to have the necessary tools when he reported for work on Monday 21 May 2007. However, the appellant arrived on site on the said Monday without the tools required and was dismissed for that reason and not by reason of redundancy.

Opening his case at the Tribunal hearing, the appellant said that he had been told by three people that he was let go but that, when he asked about redundancy, he was told that he was being dismissed.

The respondent's managing director (hereafter referred to as MD) countered by saying that the appellant had been dismissed.

Giving sworn testimony, the appellant said that the respondent had come up with a contract and that employees were told that they would be dismissed if they did not sign. He signed it but did not get a copy. The following week, his blowlamp went missing and he was told that he needed it by Monday to which he said that he had to pay his mortgage and said the respondent could buy it and take the cost from his wages.

On the following Monday the appellant had not got the blowlamp and F sent him home. The appellant rang S (the abovementioned secretary) who told the appellant that he had worked 104 weeks but, when he asked for redundancy, P told him that he was being dismissed.

The appellant reiterated his allegation that he had only signed a new contract two weeks previously and that F had told him that he would be dismissed if he did not sign.

In reply to a question from the Tribunal, the appellant said that he was not too sure about the difference between his new contract and the old one.

Cross-examining the appellant, MD described the lack of a contract date as an oversight but put it to the appellant that the contract had not issued just two weeks before the appellant's dismissal and that it had been issued before the appellant had received warnings. The appellant disputed that he had signed the contract before he got the warnings saying:

"After I signed the contract I was dismissed straight away."

It was put to the appellant that he had missed some twenty-two days in 2007, some thirteen days in the previous fifty-two weeks and some seventeen days in the preceding thirty-five weeks and that this was not a great record. The appellant replied by saying that he had rung MD when he had been out sick for ten days.

When it was put to the appellant that MD had never got a medical certificate from him the appellant

replied: "I was never asked." Suggesting that it would have been a courtesy, MD put it to the appellant that he also had a bad record for timekeeping. The appellant replied: "I had a good record compared to the lads."

Regarding the blowlamp, the appellant said that he had not had the sixty euro needed to purchase it and that he had asked F to take it from his (the appellant's) wages. MD put it to the appellant that he had been obliged to have tools and that it was not MD's responsibility. The appellant replied that his blowlamp had gone missing, that he had not been the only one who did not have a tool and that the respondent had done it for him in the past.

MD put it to the appellant that the respondent had had to put a stop to this, that F had sent him from the site on Monday 21 May 2007 and that F had the authority to dismiss. The appellant now told the Tribunal that he had told F that he would have had the money if the respondent had paid the right rate. F rang P (the abovementioned proprietor) and said that the respondent had no more work for the appellant on that site. The appellant rang for P and got S (the abovementioned secretary) who said that the appellant had 104 weeks' service. However, P said that the respondent was dismissing the appellant. The appellant rang MD who said that it was down to P.

The appellant told the Tribunal that other people were let go around that time.

The Tribunal now heard from S who said that on Wednesday 23 May 2007 she had got a call from the appellant asking how much money had gone to his bank whereupon she told him that two weeks' notice and holiday pay and a back week had been put in the bank.

S told the Tribunal that the appellant had not come in with his tools and that she knew his record. When he asked her about redundancy she could not give him a definite answer. He said that he would not have got two weeks' notice if he had been dismissed. Subsequently, S got a call from a girl who was ringing on behalf of the appellant.

At this point, the appellant told the Tribunal of his girlfriend's interest in his employment situation. MD now put it to him that he had had an entitlement to two weeks' notice regardless of whether he was dismissed or made redundant. The appellant simply replied: "I was told there was no more work for me on the site and to ring the office when I got home."

MD put it to the appellant that, six or seven weeks after the appellant was let go, others were let go, taken back and let go again. MD also put it to him that the respondent had given him warnings and that it had got too difficult. The appellant replied: "I gave you an excuse."

MD put it to the appellant that it had not been an excuse and that the warning letters had not been issued to the appellant until all employees had got a contract. The appellant replied: "I took the letters because I was given them. I signed the contract two weeks before I left."

Determination:

Having considered the evidence adduced, the Tribunal is unanimous in finding that the appellant's position was not redundant at the time of termination of his employment with the respondent and, therefore, the appeal under the Redundancy Payments Acts, 1967 to 2003, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)