

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

RP549/2007
MN773/2007

Employee

RP550/2007
MN774/2007

Employee

RP551/2007
MN775/2007

Employee

RP552/2007
MN776/2007

Employee

MN777/2007

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. M. Forde
Mr D. McEvoy

heard this appeal at Cork on 13th June 2008

Representation:

Appellants :

Mr Blazei Nowak, 19 Talbot Street, Dublin 1

Respondents :

Mr John Deasy, B.L., instructed by Ken Murray, Ken Murray & Co., Solicitors,
3 Oliver Plunkett Place, Midleton, Co. Cork

The decision of the Tribunal was as follows:-

The appellants gave their evidence with the assistance of an interpreter

Preliminary issue:

At the outset counsel on behalf of the respondent stated that the appellants in question were laid off on 4th January 2007. Redundancy was claimed by each appellant in writing, on 8th October 2007 and appeals were lodged with the Tribunal on 31st October 2007. As the appellants did not comply with the Redundancy Payments Acts, 1967 to 2003 in relation to applying for redundancy within periods as specified during lay-off or short-time, they are not entitled to payments under these Acts.

The representative on behalf of the appellants stated that the appellants were dismissed on 19th January 2007. The appellants were not placed on lay-off on 4th January 2007 and were not given forms RP9. The appellants were in Poland and returned to Ireland on 10th January 2007. They applied for their redundancy payment on 8th October 2007, which was within one year of date of dismissal and therefore complied with the Redundancy Payments Acts.

The Tribunal proceeded to hear evidence from both parties.

Respondent's case:

The appellants were employed in Cloyne, Co. Cork on a housing development. The planning was delayed and it was explained to the appellants that they were to be placed on temporary lay-off until the matter was resolved. The work re-commenced in March 2007. On 19th January 2007 the appellants came to witness and said they were drawing Social Welfare payments. The respondent helped them in every way possible. Five days later they requested their P.45's as they had obtained other work. Once work re-commenced they did not return to the respondent. The five appellants worked as roofers/slabbers and that area of work was not available for a period. A letter dated 16th January 2008 which was sent to the Tribunal, stated that the appellant's employment was terminated on 19th January 2007.

In cross-examination witness stated that the respondent rang the Social Welfare office asking what was required as employees were being temporarily laid-off and they gave whatever letters were necessary. One of the appellants requested P.45's for himself and his colleagues and they were issued on 24th January 2008. The letter dated 15th March 2007 to the Department of Social Welfare in respect of the first named appellant stated that the respondent was not in a position to re-employ him "for the foreseeable future" and that they were "monitoring the situation on a weekly basis". This letter was issued as the individual's claims for Social Welfare payments had lapsed. By letter dated 26th November 2007 the respondent wrote to the first named appellant asking him to contact witness regarding a "proposed redundancy"

In answer to questions from Tribunal members witness could not recall who requested the letter addressed to the Department of Social Welfare dated 15th March 2007. When the appellant requested their P.45's he assumed they had found alternative work.

Appellant's case:

The first named appellant told the Tribunal that the son of the owner told him and his colleagues on 17th January 2007 that there was no more work for them. On Friday 19th January he and colleagues went to the office and asked for their P.45's and the son told them he could not give the P.45's, so they went to the Department of Social Welfare to secure their positions. They had just returned from Poland after Christmas and had no money to support themselves. The Social Welfare person contacted the respondent and stated that they needed individual letters in order to claim Social Welfare support for four weeks. Each individual received a letter dated 23rd January 2007. After the four weeks the Social Welfare payment ended and they were advised to revert to the respondent who would issue another letter. They went to the respondent's office on 19th January 2007 and asked about P.45's and their statutory rights in relation to being laid-off and were told they had no entitlement to redundancy. They were aware there was no work so they did not question that response. Seven employees had been laid off, he and his five colleagues and one Irish man. They were told they would possibly get one week's wages. While they did not know all the facts they had read a Polish newspaper in Ireland regarding employment rights and they felt that certain things were not right in this case. They said if the respondent was not going to be honest with them they would lodge a case. This conversation took place outside the office. The appellant's felt they were dismissed as the conversation was leading nowhere. The son of the owner stated if they were not happy they could go back to Poland.

The appellant has not obtained any alternative work since his date of dismissal. Witness received his P.45 he thinks, in July 2007. Nobody informed him that the P.45 was ready for collection. The second named appellant went to the office and received his P.45 earlier and he told the appellant and his colleagues theirs were ready for collection.

In cross-examination witness said he did not receive his P.45 on 24th January 2007. While the letter dated 23rd January 2007 to the Department of Social Welfare stated temporary lay-off he felt it was just an excuse on the part of the respondent. He obtained alternative work for a period of three weeks in August 2007.

The second named appellant told the Tribunal that he like his previous colleague heard on 19th January 2007 that there was no more work for them. Although they were told it was temporary they were not sure. In relation to the P.45, as far as he could recall he called to the respondent at the end of June or beginning of July to request it and collected his own P.45.

In cross-examination witness said that he told his colleagues that he had collected his P.45. He had a better command of the English language than his colleagues. He was looking for alternative work and had several possibilities but was waiting for his P.45. He obtained two weeks work on a temporary basis during which time his Social Welfare payments ceased. He then received other work in November and has continued to work with the employer. He did not request his P.45 on 24th January 2007.

In answer to questions from Tribunal members in relation to the two weeks work in January 2007 and if that employer sought his P.45, he said he was placed on Emergency Tax as he had not received his P.45. He was not aware of form RP9. He was involved in the conversation outside the office on 19th January 2007. When the respondent said they were not entitled to redundancy he and his colleagues said they would go to SIPTU and they were told there was no trade union in the company. When they said they would go further to claim their employment rights the respondent was dismissive and walked away.

The third named appellant told the Tribunal that the last day he worked was 19th January 2007. On that day he and his colleagues were gathered outside the office at 12 noon and were talking with the respondent's son. When they asked what was the position regarding their employment they got a short answer "no work". When they asked about P.45's they were told the respondent could not issue them and witness did not know the precise reasons given for not issuing them. When they asked if there was any hope for work they were told there was no work at the moment. He received his P.45 in July after he had heard that the previous witness had received his P.45. He went in personally to get his P.45 and did not sign for it. He has not secured alternative employment although he has been searching for work.

In cross-examination he said that since he does not speak English the previous witness, on his behalf asked for his P.45. While his P.45 is dated 19th January 2007 he collected it in July. He was paid Unemployment Benefit and he did not go back to Poland.

The fourth named appellant said that on 19th January 2007 he was on a different building site. He received a call from the second named appellant that he and his colleagues employment has ceased and that there was a meeting at mid-day outside the office. He is a carpenter therefore he could be called to different sites and arrived to the office later than his colleagues. The son of the respondent said there was no more work for the moment but could not be more precise at that time. They asked for P.45's but got no substantial answer to that request. In January his level of English was low but the second named appellant asked for a P.45 on behalf of his colleagues and he expected that he was included in that request. His feelings as to his continued employment with the respondent were not great and deep down he expected there would be no work. They were told to return their tools. On Monday he went to Social Welfare and was told he needed something in writing and on 23rd January 2007 he received a letter stating he was on temporary lay-off for four weeks. After four weeks as there was no change in the work situation he received another letter. He obtained alternative employment just prior to the hearing of this case. He went to the office in July 2007 to pick up his P.45 as he like his colleagues, had been told by the second named appellant that the P.45 was ready for collection.

In cross-examination he said he had been actively seeking alternative employment from 19th January 2007. He did not receive his payment in respect of notice.

The fifth named appellant was told like that his work would finish on 19th January 2007 and that there was no further work for the moment. He did not get paid his notice entitlement.

Determination:

The Tribunal is relying on the letter from the respondent dated 16th January 2008, wherein it stated that the appellant's employment was terminated on 19th January 2007 and they applied for their redundancy payments within the one year period under Section 24 of the Redundancy Payments Acts, 1967 as amended by Section 12 (2)(a) of the Redundancy payments Act 1971. On that basis also the Tribunal award notice to each of the appellant's.

The appellant's are entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2003 based on the following:

First named appellant:

Date of Birth	23 rd December 1961
Date employment commenced	5 th April 2004
Date employment ended	19 th January 2007
Gross weekly pay	€900

Second named appellant:

Date of Birth	24 th April 1979
Date employment commenced	4 th May 2004
Date employment ended	19 th January 2007
Gross weekly pay	€900

Third named appellant:

Date of Birth	3 rd November 1958
Date employment commenced	28 th June 2004
Date employment ended	19 th January 2007
Gross weekly pay	€900

Fourth named appellant:

Date of Birth	29 th September 1960
Date employment commenced	9 th July 2004
Date employment ended	19 th January 2007
Gross weekly pay	€900

Please note that a weekly ceiling of €600 applies to all payments from the Social Insurance Fund.

These awards are made subject to the appellant's having been in insurable employment under the Social Welfare Acts during the relevant period.

Fifth named appellant:

This appellant is not entitled to a redundancy payment as he did not have the required two years service to qualify for payment under the Acts.

The appellant's are also entitled to payments under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 as set out hereunder:

The first, second, third and fourth named appellant's are each awarded €1,800 which is the equivalent of two weeks wages under the above Acts. The fifth named appellant is awarded €900

which is the equivalent of one weeks pay.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

