

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

2 Employees

CASE NO.

RP489/2007

RP507/2007

against
Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Letterkenny on 24th July 2008

Representation:

Appellant(s) : Una Collier, Letterkenny Citizens Information Centre, Public Services Centre,
Blaney Road, Letterkenny, Co. Donegal

Respondent(s) : O'Gorman Cunningham & Co., Solicitors, 16 Upper Main Street,
Letterkenny, Co. Donegal

The decision of the Tribunal was as follows:-

At the outset it was agreed that both appellants commenced employment with the respondent on 2 October 2001 and terminated their employment on 20 October 2006. The first-named appellant gross weekly pay was €616.74 and the second-named appellant gross weekly wages was € 823.00.

Claimant's Case:

The second-named appellant gave evidence. He stated that the respondent had employed him for a period of five years as a foreman. A good relationship existed and the witness had no problems. On the evening of 18 October 2006 he received a telephone call from his employer (the owner) informing him and his son's (first-named respondent) employment was finished up. He said that he knew that the respondent company had been under a lot of financial pressure but was shocked that they had been let go. He requested his P45 and paid all monies due.

On cross-examination the witness stated that he had received a reference from the respondent.

When asked, he again said that he had been told not to return to the site. He explained to the Tribunal that the site was to finish up at Christmas 2006. He said that he had enquired with the Administration Officer about a redundancy payment for him and his son but was told they were not entitled.

He said that the owner had also told him to return the company van to the site. On 19 October 2006 he contacted a work colleague on-site and asked for a lift home from the site after he left the company van there. On their trip home he told his colleague that his son and himself had been let go but did not discuss the matter in detail. He refuted that he had told his colleague that he was “jacking in” the job or that he was offered another foreman’s position on another site.

He said that he had informed his son that his job was terminated just after he had received the call. When put to him that the owner had to move the Contracts Manager from overseeing the other 9 sites to oversee the witness’s position because he left, he replied that the Contracts Manager was on the site on a daily basis. When put to him if he had asked for a letter to say he had “been finished up”, he said that there had been a lot of letters.

When asked by the Tribunal how he knew the site was to finish up at Christmas 2006, he replied that it had been mentioned at site meetings in April and May 2006. He stated there had been no conversation as to what would happen to the employees after Christmas. When asked if he had any say in the hiring of staff, he replied that the owner did ask his opinion but that he, the owner, made the final decision. He explained that when he received his monies owed and P45 he returned his work phone and work clothes. When put to him about the phrase “sorry to lose him...” in the letter of 20 October 2006, he replied that he had not disputed the contents of the letter. The witness gave evidence of loss.

When put to him, he said that he had not been offered another position as foreman on another site. He said that he had been very happy working on the site in question.

The first-named appellant gave evidence. He stated that he had been employed by the respondent as a carpenter. He explained that his father (second-named appellant) had received a call from the owner of the respondent company and conveyed to him that their jobs were gone. He said that his father asked for references for both of them. He signed on for social welfare benefits a couple of days later informing then that he had been let go.

On cross-examination he stated that he had not spoken to any of his work colleagues after his dismissal. When asked if he agreed the wording of the letter of 20 October 2006, he replied that he had dyslexia and therefore had difficulty reading letters or completing forms. When asked if he accepted what his father had told him in relation to the loss of his job, he replied that he had. He said that his father had never said they were never going back to work.

When asked by the Tribunal what work remained on-site, he replied that there had been some 1st stage fixing and 2nd stage fixing to be completed. The sub-contractors were carrying out the 2nd fixing. When asked, he said that he had not attended any site meetings. He stated that he had only been 2/3 months on the site in question as he had been working elsewhere for the respondent. He said that it wasn’t unusual to move sites and was unsure if any other carpenters were let go.

Respondent's Case:

The owner of the respondent company gave evidence. He stated that at the time in question he had 10 jobs on the go with 30 staff and 200 sub-contractors.

On the day in question (18 October 2006) he was attending a meeting in Derry when he received a call from the second-named appellant who informed him that he was not happy with the job and was moving on. The witness told the appellant that that the appellant could move to another site, that he needed to sleep on what he (appellant) had said and that he would speak to the appellant the following day. The witness explained to the Tribunal that he needed both appellants. He never saw them again until the day of the hearing.

The witness explained that both appellants were given references but that his Administration Officer had dealt with it. He said that he had never implied that he was going to let them go.

On cross-examination he said that he could not be completely sure if the second-named appellant had rang him or if he had rang the appellant. The following day he received a call to inform him that the second-named appellant had returned the company van. He explained that because the appellants had left he had to move his Contracts Manager onto the site to oversee the build. The Contracts Managers job was to oversee all 10 sites and now the witness had to take up that position. When asked why he had not contacted the second-named appellant after he had left, he replied that the appellant had just left him in the lurch. He had no idea why the appellants had left.

When asked by the Tribunal why he had not asked his Administrator Officer to contact the appellants, he replied that it was clear that they were not coming back. When questioned about an undated notice to all staff requiring them to work a 5½ day (including Saturday) or if unwilling could seek alternative employment, he explained that it can come about during the summer of 2006. He explained that the second-named appellant had requested it as he had a problem with staff coming to work on Saturdays. He said that it was not usual for him to contact the second-named appellant or vice versa. The Contracts Manager dealt with him.

An employee for the respondent gave evidence. He explained that he had received a call from the second-named appellant asking him to meet him on-site and then give him a lift home. He went to the site, met the appellant who had picked up some "things" and drove him home. He said that the appellant in question told him that the owner had rang him the previous evening telling him that he wanted him to move to another site. The appellant was not happy.

On the witness's return to the site he spoke to the Administrator Officer who asked him why he had the van, the witness replied that the second-named appellant had told him that he had "jacked up".

On cross-examination he said that he presumed the appellant had left because he had returned the company van, picked up his things and had been told that the appellant had said he was not going back. When asked, he said he was not aware of the contents of the conversation between the owner and the second-named appellant.

When asked by the Tribunal, he said that he did not know the site the owner wanted the appellant to move to. He said that he had spoken to the owner about the appellants leaving.

The Administrator Officer gave evidence on behalf of the respondent. He stated that the previous witness had informed him about the second-named appellant leaving the company van and saying

his was “jacking” the job in. he rang the owner who already knew what had happened.

The following week the second-named appellant requested both his and his son’s P45, monies owed and references. All were issued. The following week letters were requested for the Department of Social and Family Affairs, which he thought, had been dated incorrectly. When asked, he said that he received no correspondence with the first-named appellant.

When asked by the Tribunal the second-named appellant had requested the letters as he needed to confirm their date of leaving but he had contacted the witness concerning the wording of the letters. He wanted the wording “left the employment of your own free will” to be removed. When asked why no-one had enquired why the second-named appellant was unhappy, the witness replied that it was not his place to enquire.

Determination:

Having heard all the evidence adduced the Tribunal finds that there were no circumstances of a redundancy situation and that if anything the circumstances would support a case of dismissal but this case was not brought before the Tribunal. In the circumstances, the claims under the Redundancy Payments Acts, 1967 to 2003 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)