

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:

CASE NO.

Employee

RP662/2007

against

Employer

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Mr. M. Flood  
Ms. A. Moore

heard this appeal at Dublin on 27th June 2008

Representation:

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Appellant :

P C Moore & Co., Solicitors, 17 South Great Georges Street,  
Dublin 2

Respondent :

Ms Ciara O’O Duffy B.L., instructed by Gerrard L McGowan, Solicitors,  
The Square, Balbriggan, Co.Dublin

The decision of the Tribunal was as follows:-

The appellant gave his evidence with the assistance of an interpreter

**Respondent’s case:**

The managing director told the Tribunal that the appellant is a Russian national and commenced his employment with the respondent in January 2003 as a general helper. He worked to January 2005.

He left on December 20<sup>th</sup> 2004 and did not return on 3<sup>rd</sup> January 2005. The respondent was told by third parties that the appellant was not coming back and he was then issued with his P.45. In February 2005 he turned up and pleaded to have his job back and the respondent feeling sorry for him, took him back on 7<sup>th</sup> February 2005. He then worked until the following Christmas when he went on holidays. The respondent tried to contact him and he returned after two months. He was given another P.45. His last period of employment was from 20<sup>th</sup> February 2006 to 16<sup>th</sup> July 2007 therefore he had only sixty-eight weeks continuous service. He was given a week's pay and one weeks pay in lieu of notice. Witness disputed that the appellant worked as a carpenter.

In cross-examination witness said he was not aware of who the third parties were that contacted the respondent in January 2005 stating that he was not coming back to work. There was no contact made by the appellant himself. The two periods when the appellant left at Christmas 2004 and 2005 were the busiest for the respondent and they were penalised for late delivery of materials. Nobody takes eight to ten weeks holidays. The P.45's were sent to his Irish address.

### **Appellant's case:**

The appellant commenced his employment on 17<sup>th</sup> January 2003 and worked until 16<sup>th</sup> July 2007. He did not receive the P.45's dated 17<sup>th</sup> January 2005 and 6<sup>th</sup> January 2006. The only P.45 he received was the one dated 16<sup>th</sup> July 2007. He was doing well working for the respondent and is a qualified carpenter. He was never a general worker. When he asked for his P.45 after Christmas 2006, i.e. 6<sup>th</sup> January 2007 he was refused and told that the respondent would take him back but would let him know when they had work for him. He was never formally let go and did not receive this P.45. He started working again four weeks after he returned from holidays. The respondent was renewing his Work Permit each year and there was no break in his service. Every time he asked for holidays he stated the dates he was going and returning.

In cross-examination witness stated that after Christmas 2006 he rang the respondent stating he would be two weeks late returning as his mother was in hospital. In relation to the workload in December 2005 witness said it was normally busy before Christmas and quiet after Christmas. The last P.45 dated 16<sup>th</sup> July 2007, which appellant says he received shows a date of commencement as 20<sup>th</sup> February 2006 and he could not figure out why this was written here and he did not question it. He received P.60's each year.

### **Determination:**

The relevant period of time for the purpose of qualifying for redundancy is the period of time December 2005 and February 2006. The appellant did not dispute that work re-commenced on 20<sup>th</sup> February 2006. The circumstances surrounding the re-commencement were disputed. The appellant maintained initially he returned to Ireland from Moldova and the respondent indicated he had no work and to wait until he had work and refused to give him his P.45. The respondent disputes this. The appellant then acknowledged that he was in fact late back from his holidays due to his mother's illness.

On balance the Tribunal is of the view that the circumstances as outlined by the respondent are more likely to be accurate as opposed to those outlined by the appellant, thus he does not have one

hundred and four weeks continuous service, therefore he does not qualify for payments under the Redundancy Payments Acts, 1967 to 2003. His appeal is therefore dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

