

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP341/2008

against

2 Employers

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Murray

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard this appeal at Cork on 6th November 2008

Representation:

Appellant: Daniel Snihur, IWU, 55 North Main St, Cork

Respondent: Ó Catháin, Solicitors, 30 South Terrace, Cork

The decision of the Tribunal was as follows:

This case came before the Tribunal by way of a claim for redundancy under the Redundancy Payment Acts, 1967 to 2003.

Appellant's case:

The Appellant gave evidence through an interpreter that he commenced work with the Respondent on the 16th of January 2006. From the 8th of February to the 6th of March 2008 the Appellant was on sick leave due to back pain. He was very short of money and was trying to support his wife and child on Social Welfare benefit. He was on strong pain-killers and found that he was able to work by about the beginning of March and he got a few days work with XXXX at that time. He did this work without notifying his employers. He was lead to believe by a colleague that he was probably going to be laid off. He phoned the Company and asked whether or not there would be a job for

him when he returned from sick leave and understood that there was only a couple of days work left for him. Consequently he looked for - and got - other work. It emerged from the evidence also that the Appellant is maintaining a claim for unfair dismissal before another body.

He acknowledged that he met with the Respondent on the 9th of March and denied that he was told the Respondent was starting a house in Macroom, and subsequently a job in Millstreet over the next number of months. He acknowledged that he was shown plans for a house, but said that the plans were shown to him for the purposes of emphasising the small amount of block work that was left for him to do.

He asked for his P45 and was given it. The date of commencement of his employment with Ahern Construction was the 3rd of March 2008.

When the Appellant got his P45 the date in same was the 13th of March 2008, and the Appellant felt that because of this he was effectively dismissed on that date.

Respondent's case:

On behalf of the Respondent a Director of Ahern Builders (KA) gave evidence that he believes that the Appellant had started working for him on the 3rd of March 2008. He stayed for about 10 days but had difficulties at home. The Director said that he had more work if the Appellant had been available.

The Managing Director of the Respondent Company (JD) gave evidence on behalf of the Respondent. He said that his Company is a small construction Company. He gave evidence that the Appellant had handed in a sick note for the 8th of February 2008. He said that on Sunday the 9th of March he was contacted by the Appellant, who asked him how much work he had on. At that stage the Appellant was working with XXXX in Ballincollig. He agreed to meet the Appellant at his home where he showed him plans of a house that he was about to start in Macroom and told him that he would call him back the next day. On Monday he phoned him and told him that he also had work in Millstreet. The Appellant however said that his new boss needed his P45. He never heard anything further from him. He actually had to employ a replacement for the Appellant. He gave evidence that he had ongoing work up to the present day, and that the Appellant might well have been in his employment up to now if he had continued working with him. The Director also gave evidence of a series of text messages that passed between himself and the Appellant.

Determination:

Having heard the evidence in this case the Tribunal is satisfied that the Appellant herein was neither dismissed nor laid off for a period of 4 weeks, but rather made a personal decision to leave his employer and take up work elsewhere.

The Tribunal cannot see how the Appellant can succeed in his claim for redundancy, and consequently the claim under the Redundancy Payments Acts, 1967 to 2003, is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

