

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee
MN316/2008

RP285/2008

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
Ms. P. Doyle

heard this appeal at Cork on 22nd October 2008

Representation:

Appellant: Mr. Ben Weathers, SIPTU, Assistant Secretary, Midleton Branch, Connolly Street,
Midleton, Co Cork

Respondent: Ms. Tonya O'Mahony, Stokes & Company, Solicitors, 20 Grand Parade, Cork

The decision of the Tribunal was as follows:

Claimant's case:

The claimant gave evidence that he finished work with the respondent on 7 July 2007, when he worked in Charlesfort. He said that he worked most weekends with a varying number of hours from five to ten at a time. He had no warnings issued to him at any stage. He had no indication that the work would finish, but he was told that the company would not be around much longer. No notice was given to him. He said that the Operations Manager (CD) told him that the company was gone, and that there was no more work for him. He was contacted by Express Security for an interview, but failed to get the job. He said that his file was given to Express Security by the respondent. He has received no contact from the respondent since.

He said that he had a full-time job now, and has transferred his tax credits to this company. There was no bad feeling between him and the Managing Director of Media Security (RR). He admitted that he had called to RR's house on 30 June 2007 and handed back his uniform saying that it wasn't worth working there any longer. This was a hasty decision. He was having tax problems and had asked RR to help him in paying his taxes. He said that he went back to work with the respondent the following weekend and that RR gave back his uniform to him. So his continuity of employment was not broken. On being asked had he handed in his resignation on 30 June 2007, he said that there was nothing in writing, and that RR gave him back his uniform. He got no further work with the respondent after 7 July 2007. He said that CD recruited him for the job in Charlesfort. He didn't recall when RR gave him back his uniform, but that he got it before he worked in Charlesfort. He understood that his job was finished on 7 July 2007. He presumed that RR had handed on his file to Express Security. He was asked why he did the interview with Express Security so soon after working for the respondent on 7 July 2007. He explained that he did the interview because CD had phoned him to say that the company was gone, and he got no offer of work after 7 July 2007.

Respondent's case:

An employee has to be dismissed in order to be entitled to redundancy, but the claimant was not dismissed. Therefore the Minimum notice claim also fails. The company is no longer trading, but still exists and is in debt.

The Managing Director of Media Security (RR) gave evidence that he had no major complaints about the claimant's work. He said that he called a meeting in January 2007 regarding the new legislation required for security officers. All staff signed new contracts of employment in March 2007. He said that the claimant approached him in January 2007 asking him to pay half his tax bill because he had used up all his tax credits and was unable to do extra work as a result.

On 30 June 2007 the claimant came to his house saying it was no longer worth his while working with the company, and handed back his dress uniform, so he accepted his resignation. He said that he transferred some contracts over to Express Security, but that he had other work he could have given to the claimant. He was sure that he had told the Operations Manager (CD) that the claimant was unavailable for work, so he was surprised when the claimant arrived at his house on 7 July 2007 ready to go to work for the company in Charlesfort. He said that he told the claimant he thought he was gone, and the claimant told him that he was only doing this job as a favour for CD. He admitted that he handed on the claimant's file to Express Security, but that he only did this to help him to get work.

He said that the claimant's tax problem resulted after he had gone into the higher tax bracket. He said that there were no payslips for the claimant, or other staff, because he was a one-man operation in organising the payroll, but he did do tax returns for all payments made. He agreed that he handed over Employees' files to Express Security, i.e. their licences to show that they were capable of doing security work. He admitted that by handing over contracts to Express Security, he was transferring some of his business to them. He said that the claimant was given a P.45 shortly after he left.

The company Secretary (OO'S) gave evidence that she was surprised that the claimant had handed back his uniform on 30 June 2007, and she understood by it that he was no longer available for work. RR told her that the claimant had terminated his employment with the company. She was surprised to see the claimant coming back in to work on 7 July 2007. She didn't recall RR giving back the uniform to the claimant.

Determination:

On the evidence presented to the Tribunal, we find that his employment was not properly terminated until he was informed by the Operations Manager (CD) that the company was gone, and that no more work was available for him. On that basis, the Tribunal finds that the appellant was made redundant.

Based on the evidence of the appellant, the Tribunal finds that he is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2003 based on the following details:

Date of Birth	2 March 1968
Date employment commenced	11 May 2004
Date employment ended	7 July 2007
Gross weekly salary	€120.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal also awards him €240.00 (being the equivalent of 2 weeks pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

