

EMPLOYMENT APPEALS TRIBUNAL

Appeal Of:
Employee

Case No.

RP499/2008

against
Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. A. O'Mara
Ms. E. Brezina

heard this appeal at Dublin on 17th September 2008

Representation:

Appellant: Mr. Blazej Nowak, Emigrant Advice Centre, 19 Talbot Street, Dublin 1

Respondent: Mr. Breffni O'Neill, Construction Industry Federation, Construction House,
Canal Road, Dublin 6

The decision of the Tribunal was as follows:

At the outset of the hearing the respondent's representative stated that it was disputed that a dismissal or a redundancy had occurred.

Appellant's Case:

The appellant gave evidence with the assistance of an interpreter. The appellant commenced employment with the respondent as a general operative in February 2005. The appellant was put on temporary lay off on the 7th January 2008. The appellant signed part B of an RP9 form on the 13th February 2008 and submitted it to the respondent by registered post. The appellant was offered further work with the respondent in March 2008 and he withdrew his request for redundancy as a result.

Subsequently, the appellant was again placed on lay off on the 11th April 2008. The appellant completed part B of an RP9 form and posted it to the respondent by registered post on the 21st May 2008. The appellant did not receive counter notice from the respondent. The appellant received no further contact from the respondent. The appellant contacted the respondent's office in July 2008

seeking his P45.

During cross-examination it was put to the appellant that he was asked prior to December 2007 to obtain necessary paperwork, which would enable him to work on the respondent's site at Dublin airport. It was put to the appellant that he had not submitted this paperwork to the respondent until mid to late April 2008. The appellant replied that he had completed the paperwork in or around October/November 2007 and that he had submitted all of the paperwork before April 2008. It was put to the appellant that he was also obliged to submit police clearance paperwork from the Polish Embassy. The appellant replied that he had submitted this when he returned from Poland in January 2008. It was put to the appellant that the respondent had posted counter notice to the appellant. The appellant stated that he had not received the counter notice.

Respondent's Case

A director of the company gave evidence to the Tribunal. Prior to December 2007 the appellant was working on a site in Dun Laoghaire. The company then secured a contract at Dublin airport. It was a requirement of the contract that every employee must have security clearance to work at the airport. The security requirements included photo identification and police clearance from those employees who had worked with the respondent for less than ten years.

When the appellant sought a redundancy payment in March 2008 (after the first period of lay off) the respondent calculated the redundancy payment due to him. However, the appellant then contacted the respondent stating that he did not want a redundancy payment. The appellant was aware that there was upcoming work in Blackrock. The appellant worked for a number of weeks at the site in Blackrock. This was on the understanding that he would have the necessary paperwork for the respondent in a few weeks.

The appellant failed to submit his paperwork on time. Consequently, the appellant was placed on temporary lay off in or around the 11th or 12th of April 2008 as the respondent had no other work to offer him. The appellant submitted his paperwork in mid to late April 2008. It was through the appellant's own negligence that the company could not offer him work.

There was no alternative work available to the appellant until June 2008. When the counter notice was posted to the appellant an accompanying note was enclosed offering the appellant alternative work with the respondent.

During cross-examination it was put to the director that the appellant had not received the company's counter notice. The director replied that it was sent to the appellant by ordinary post. The respondent's post book was submitted for consideration by the Tribunal.

Determination:

The Tribunal carefully considered the oral and documentary evidence submitted at the hearing. The respondent failed to offer the appellant thirteen weeks continuous work after the first period of lay off. On his second request for redundancy the appellant was not offered employment because of special requirements at the airport site. The respondent company was not in a position to offer the appellant alternative work. Accordingly, the Tribunal finds that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2003, and based on the following criteria:

Date of Birth: 22nd May 1963
Date of Commencement: 7th February 2005
Date of Termination: 22nd May 2008
Gross weekly pay: €580.00

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)