

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
RP1087/2008

- Appellant

Against

5 Employers - Respondant

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr F. Moloney
Mr B. Byrne

heard this appeal at Dublin on 18th March 2009

Representation:

Appellant: In Person

Respondent(s): Mr Tom O'Grady, IBEC, Confederation House,
84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows: -

Appellants Case

The appellant has worked for the respondent for nineteen years. The appellant was absent from work on sick leave from September 2007, he received a letter from the respondents HR Manager requesting a meeting on the 8th of February 2008 to discuss the fact that his job could not be left vacant while the appellant was on sick leave. The appellant was offered four weeks holiday pay and a possible extra four weeks 'moral obligation' pay which he asked to be confirmed by the HR Manager in writing. It was made clear at this meeting that his job was replaced and this was not a redundancy payment. The appellant received a letter from the HR manager dated the 25th February 2008, stating that another meeting would be arranged in order to reach a suitable conclusion. The appellant did not receive any further communication from the respondent until the 21st of October 2008, following correspondence from the Tribunal. The letter stated that the appellant was not being made redundant but was being let go. The letter of the 21st of October was inviting him to a meeting on the 31st of October 2008 to plan his retirement. The appellant

replied to the letter stating he was unavailable to attend the meeting but would like the respondent to forward the retirement plan to him in order to deem it acceptable. The appellant received a further letter dated the 13th of November 2008 requesting him to meet with the company doctor to make a final assessment of his condition. The appointment with the doctor did not take place and a further meeting was arranged for the 12th of February 2009, where the appellant made it clear that he was not happy with the offer of 4 weeks holidays and 4 weeks bonus pay offered and he was under the impression that a subsequent offer would be made.

Respondents Case

The respondent's HR Manager refers to a medical assessment undertaken on the 22nd of January 2008 which concludes that the appellant is unfit for work and it is unlikely that he will be able to return to work in the future. A meeting was set up for the 8th of February 2008 to discuss the medical report and his condition and the fact that he is unfit to work. The respondent made it clear at the meeting that it was not a redundancy situation and that there would not be a redundancy payment. They discussed the option of the appellant moving to a merchandising role closer to his residence but nothing was formalised. The HR Manager stated that it is not company policy to pay any ex-gratia payments when a member of staff leaves, he did ask the general manager if any exception could be made but was informed that the policy stood with regard to the appellant. At the meeting of the 12th of February 2009 the HR Manager was aware that the appellant did have an expectation that a redundancy payment would be made. The respondent is still in receipt of medical certificates from the appellant.

The Tribunal queried the Pension options available to the appellant and noted that all information and options available to the appellant regarding retirement should be provided. The respondent has asked the pension administrator to contact the appellant with regards to his retirement options.

Determination:

Having heard the evidence adduced, the Tribunal is unanimous in finding that the appellant's position is not redundant; the appellant is on long-term sick leave and submitting medical certificates to the respondent. The appeal under the Redundancy Payments Acts, 1967 to 2003, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)