

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

- *appellant*

CASE NO.

RP1029/2008

against

Employer

- *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Taaffe

Members: Mr. R. Murphy  
Mr. S. O'Donnell

heard this appeal at Dublin on 19 February 2009.

Representation:

Appellant: Mr. Charlie Prizeman, Industrial Officer, TEEU  
5 Cavendish Row, Dublin 1.

Respondent: Mr. Conor Bowman BL, instructed by Ms. Andrea Nealon of  
Fitzgerald Gallagher McEvoy Solicitors, Orby Chambers,  
7 Coke Lane, Smithfield, Dublin 7.

The decision of the Tribunal was as follows:-

#### **Respondent's case:**

The managing director of the respondent gave evidence. The appellant worked until 29 August 08. On the 25 August 08 the managing director was out on site looking for work. It was about 8.00pm when he returned to the office. The appellant was waiting for him and had been at the office since about 12.00pm. The appellant had been told by his supervisor to go north to a job and take an apprentice with him. The appellant was unhappy with the instruction to go north yet again. The managing director was not happy that the appellant let down a long-term customer. The appellant offered his resignation.

The next day the managing director instructed the supervisor to contact a former employee and offer him the position. The appellant contacted the office between 11 and 12 to withdraw his resignation but the position was filled. This employee was let go later due to a downturn in

business.

The managing director did not issue or instruct someone to issue the reference letter with his name on it. He thought it likely that the payroll clerk had issued it. The reference letter was similar to one that had issued to someone else.

The supervisor gave evidence. On the morning of 25 August 2008 a long-standing customer in the north phoned him. There was a problem. The appellant was working in the yard. The supervisor told him to take an apprentice with him and go and fix the customer's problem. The appellant phoned the supervisor at about 12 saying he was on his way to the office. The appellant had worked the previous Saturday and Sunday and was faced with that situation arising again. They were working long hours to finish projects.

The supervisor had the impression that the appellant was going to the office to have an argument, so he told the appellant to take the rest of the day off and go north in the morning. He sent someone else north. Later the appellant phoned the supervisor to say he had resigned. The supervisor advised him to phone the office in the morning and apologise and take back his resignation. The next day the appellant phoned him to say someone else had his job.

The replacement employee gave evidence. He phoned the office about a week before the incident looking for work. On 26 August 08 at about 9.00am the supervisor phoned him to say a job had come up. He was to start on the following Monday, but later in the week they phoned him again, and he started on the Saturday.

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

The appellant gave evidence. On 25 August 08 the supervisor phoned him to go north. The previous week he had worked at least 75 hours. It was unsafe and unreasonable to expect him to go. When he said this to the managing director his reaction was that they were under pressure and he was unhappy about the appellant being at the office. The appellant felt that he had no choice but to verbally resign.

The following day he left home at 5.00am and was on site in the north at 8.00am. He phoned the managing director to withdraw his resignation but the managing director did not answer his phone. That afternoon the managing director phoned him to tell him that his job was gone.

#### **Determination:**

The Tribunal carefully considered the evidence adduced. The Tribunal accepts that the appellant verbally tendered his resignation to the respondent. Immediately the appellant ceased employment, his position was filled. Therefore a redundancy situation did not exist. The claim under the Redundancy Payments Acts, 1967 to 2003 fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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