

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

against

Employer

under

CASE NO.

RP894/2008

- *appellant*

- *respondent*

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Mr G. Hunter

heard this appeal at Letterkenny on 27th February 2009

Representation:

Appellant(s) : Sheridan & Co., Solicitors, Unit 6, Block B, Riverside Office Park, P.O. Box 83,
Letterkenny, Co. Donegal

Respondent(s) : Dessie Shiels, Solicitors, 16 Academy Court, St. Oliver Plunkett Street,
Letterkenny, Co. Donegal

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant gave evidence. He had been employed as a labourer for the respondent for three years and worked in a team with two qualified plasterers.

In June 2008 the respondent's owner informed him that there was no more work for him. There was no mention of a redundancy payment and he never told the owner that he had another job to go to. The owner did tell him that there could be some work the following week but he never received a call about it and did not arrive for work the following Monday. The following week he rang the owner but was informed there was no work and things were quiet. He did not turn up for work after this.

He requested his P45 on a number of occasions for social welfare requirements but had to wait a number of months to receive it. He also requested the owner to complete motor insurance forms for him to explain that he had been let go but he could not get them completed. The owner told him that he would contact him if any work turned up.

When asked he said that although the business was not that busy, there was work to be completed. He received his final pay cheque on May 15th 2008. He explained that he had received a lower payment for the last few previous weeks of his employment as he was on short time. When shown to him he stated that he had not received a letter dated April 29th 2008 from the respondent stating "*due to the downturn in business I XXXX am unable to provide full time employment for XXXX for the foreseeable future*".

When asked by the Tribunal he replied that he did not know if the plasterers he had worked with had been let go or if his position had been replaced.

Respondent's Case:

The owner of the respondent company gave evidence. He explained that he ran a plastering business for the past seven years and had two teams consisting of two qualified plasterers and a labourer each. He also did some work if required. The appellant worked in a team with the witness's brother and one other. He was an excellent worker.

Over the months work became quieter and he put his workers on a three-day week. The following week the appellant and his colleagues requested a letter from him for the Department of Social and Family Affairs concerning their three-day week employment. His wife compiled the letter dated April 29th 2008 and forwarded it to all employees concerned. One evening the appellant rang him and informed him that working a three-day week was "not great", that he had acquired a new job and needed his P45. He told the appellant that he did not want to lose him as he was a good worker but understood if he could get a full weeks work.

When asked he said that he had seen the appellant earlier that day as he had given him his wages but there had been no mention of him being paid off. Since the appellant had left work had increased and the appellant had been replaced. He stated that he had not made the appellant redundant and had left messages on the appellant's phone two weeks after he left to tell him his P45 was ready to be collected. He said that if he had made the appellant redundant he would have had no problem paying him.

He said that he had not asked the appellant who he was going to work for but had been told he got work doing shuttering and guttering work. He had no reason to pay off the appellant. The appellant had left of his own accord. He explained that he had worked with the appellant for twelve years and was a neighbour.

When asked about the duration it took for the appellant to receive his P45 he answered that, in hindsight, he should have posted it but that the appellant had only asked for his P45 on one occasion. When the appellant had given him the insurance form and RP50 to complete he had told the appellant that he had not paid him off and could not complete the forms. He said that he had meet the appellant some time later and informed him that he ad a few days work for him but was told that his job was "dead on" and did not need any work from him. His accountant had informed him that the appellant was not entitled to a redundancy payment.

Determination:

Having heard the conflicting evidence from both parties the Tribunal finds that work had been still available for the appellant and that he was not made redundant. Accordingly, his appeal under the Redundancy Payments Acts, 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)