

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
Employee - appellant

CASE NO.  
RP461/2008

against

Employer -respondent

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. G. Phelan  
Mr. A. Kennelly

heard this appeal in Nenagh on 9 January 2009

Representation:

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Appellant(s) :

Mr. John M. Spencer, Spencer & Donovan, Solicitors,  
Main Street, Ballina, Co. Tipperary

Respondent(s) :

Mr. William O'Brien BL instructed by  
O'Meara & Co., Solicitors,  
Clare Street, Nenagh, Co. Tipperary

The decision of the Tribunal was as follows:-

It was claimed in writing to the Tribunal that the appellant was let go because of lack of work but that, after applying unsuccessfully to his employer for his redundancy, the appellant had not received redundancy money or a proper explanation as to why there was a refusal to pay it. It was claimed that the appellant's employment began on 10 February 2003 and ended on 1 January 2008.

The respondent's notice of appearance contended that this was not a redundancy situation.

At the start of the 9 January 2009 Tribunal hearing the appellant's representative stated that the P45 termination date for the appellant was 21 December 2007. The respondent's representative stated that the contract had terminated around 28 December 2007.

Giving sworn testimony, a respondent director (hereafter referred to as FC) said that he had employed the appellant as an apprentice carpenter. The appellant was near the end of his fourth year and, therefore, “nearly out of his time”.

On about the third or fourth week of November 2007 the appellant was “off sick”. FC then said to the Tribunal that on Friday 23 November 2007 the appellant was “off sick and for three weeks after that”. (For the purposes of looking at pay records the Tribunal was told that the appellant had been paid in arrears.) That brought matters up to the night of Sunday 16 December 2007 when the appellant rang FC and said that he was fit to go back.

FC told the Tribunal: “We were finishing up on the Friday (21 December 2007) anyway. I said I’d have no work that week but I’d have it in the New Year. He said that if there was no work he would need his P45. The conversation went on for seven or eight minutes. Eventually I said I’d have to give the P45 because I’d no work for him. I said he could go to my house and do odds and ends for the next few days. We were going to finish on the 21<sup>st</sup>. We’d recommence on Monday 7 January (2008). People were paid for the two weeks off. He said he could not work on Friday (December) 21<sup>st</sup>. He could work four days. I got no certs. That would always be a quiet time of the year.”

Asked about the time prior to the appellant’s illness, FC replied that the appellant had been working at Dundrum, that the respondent had been working on four or five sites and that the respondent had had about twelve men working at that time. FC denied that the respondent had been starting to lay people off or make them redundant but, asked if the respondent had done that lately, he mentioned December 2008 and said that he now had “people on protective notice”.

Speaking of the appellant, FC told the Tribunal: “I’d told him there’d be work from 7 January 2008. I told him he might as well do some work in my home while he worked his notice. This work given to him was not a contract. It was costing me money. I think he did some decking. The company would not be billed for that. I’d no proper work for him that the company could make money from. He could work for four days. He got paid for work in my house and his holiday pay.”

FC denied to the Tribunal that, when he had spoken to the appellant on 16 December 2007, he had made it seem uncertain that there would be work on Monday 7 January. He told the Tribunal that there was work for everyone on 7 January but that 20 December 2007 was the last day that the appellant worked for FC and that “the two weeks’ notice was to expire on 28 December 2007”.

Regarding the appellant, FC told the Tribunal: “I contacted him in January. We had a job. He had worked on it. The main contractor asked for him. I think it was Thursday 17 or Friday 18 January. I asked him could he start on the Monday (21 January). He said he couldn’t but would start on the Tuesday (22 January). I said he could arrange a lift (with an employee herein referred to as B) to Limerick. B heard nothing from him. I rang him (the appellant) on the Monday. I got no reply. I tried a few times. I got a text to say his throat was at him and that he could not start on Tuesday. In the text he said that he hoped to be back on the Thursday.”

FC now told the Tribunal that he was told that somebody else would be wanted if the appellant was not back by Thursday. The assignment on offer from the main contractor was duly filled by somebody else.

FC confirmed to the Tribunal that, in late March 2008, the appellant had contacted him to seek

redundancy whereupon FC had rung a citizens' information centre who had said that the appellant was not entitled to redundancy. The appellant had said that he (the appellant) had rung the citizens' information centre and had been told that he was entitled to redundancy.

FC told the Tribunal that he had let nobody go in November or December of 2007 or in January or February of 2008 and that he had not needed to do so. He did not agree that there had been twenty "on the books" in mid- 2007. He counted out eleven names.

Giving sworn testimony, the appellant confirmed his date of birth as 6 June 1983 and that he had started with the respondent on 10 February 2003. Asked if the respondent had "started small", he said that there had been five or six employees but that others had joined and that he thought that twenty to twenty-five had worked for the respondent "at the height of the business".

The appellant said that he had not thought that his work was very "safe", and, in fact, that, having listened to others, he had thought that "the work was going very bad". The respondent had projects with large contractors but "they were coming to an end and even they were letting people go". The appellant added that FC "recommended me to go to Australia in a couple of conversations" and that "the talk was that Australia had been booming".

Asked if there had been any talk of lay-offs, the appellant replied: "We were put on protective notice in September or October. I thought my job would come to an end." The appellant added: "I was told verbally about protective notice. I did not ask for it in writing."

Asked to comment as to mid-December 2007, the appellant said that, after he had made calls on Friday (14 December) and on Saturday (15 December), FC had rung him on the Sunday (16 December) to say that he (FC) had no work for the appellant. (The appellant had had a doctor's appointment on Friday. The doctor had said that the appellant should take six weeks off and that he could work if he did not get a "knock" on the cheek.) FC asked the appellant if he had any "private jobs" or if the appellant could get them. When the appellant said no FC said that he had no work. FC said that he might have work for the appellant in January but, the appellant told the Tribunal, "it was only a might".

The appellant told the Tribunal that he was happy to work directly for the respondent but that FC said that if the appellant did not work he would not get paid. The appellant had no money for the month before Xmas and would not be able to get social welfare if he did not have a P45. The appellant did not feel that FC's offer was a good one and the appellant thought that he "would get a bad credit rating with the bank".

The appellant stated to the Tribunal : "Nothing was said about work in January. It was a maybe. Nothing definite was said. I would be insane to give up five years' work over (for the sake of) four days. My wage was good. It was agreed that I would get a P45. I did not get it till late January or February. It was left in a bag with my tools. I could not get social welfare. I went to FAS. Not having a P45 held me back. I was not let sign on till the end of January. I got my P45 at the end of January or at the start of February. In January I think I got a viral infection. I was texting. I could not talk on the phone."

Telling the Tribunal that he had served two redundancy notices on FC, the appellant admitted that he had not thought of making a copy and said that, when he had phoned FC, FC had said that he

had not received the said redundancy notices in the post.

The appellant told the Tribunal that he had been told that his job was gone if he did not go back and that he had “loved the job” but that he had had a throat infection and had been told not to go out in the cold and not to be near dust. The appellant named his G.P. and furnished medical certification at the hearing.

**Determination:**

On the evidence presented to the Tribunal, the Tribunal finds that there was a redundancy situation and that the appellant is entitled to a redundancy lump sum based on the following:

Date of birth:	06 June 1983
Date of commencement:	10 February 2003
Date of termination:	01 January 2008
Gross weekly pay:	€650.00

It should be noted that Tribunal redundancy awards are subject to the employee having been in insurable employment during the relevant period and that social insurance fund payments are subject to a statutory ceiling of €600.00 per week.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

