

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

CASE NO.

RP668/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms M. Mc Aveety

Members: Mr R. Murphy
Mr J. Moore

heard this appeal at Monaghan on 30th January 2009
and 9th April 2009

Representation:

Appellant(s) :

Mr. Adrian Kelly, A B O'Reilly, Dolan & Co, Solicitors, 27
Bridge Street, Cootehill, Co Cavan

Respondent(s) :

Mr Rory O'Neill, Seamus Mallon & Co, Solicitors, Glencarne
Centre, Castleblayney, Co. Monaghan

The decision of the Tribunal was as follows:-

The appellant was employed as a truck driver with the respondent company for about twenty years. He gave evidence that on the 22nd February 2008 he returned from a trip to Germany and was told that there was currently no work available. On Thursday 28th February there was a load available for him, but he was not fit to go. After this he rang the respondent several times, but there was no work forthcoming. In early April he called to the respondent's premises seeking a letter to say there was no work so he could claim social welfare. He received this letter. From February through to April he received no work from the respondent, nor could he recall receiving any phone calls. He worked for twenty years with the respondent there was an odd time during the course of his employment he was not available for work. Through his solicitor he submitted a RP9 form to the respondent on the 18th April 2009 to which he received no response. He got another job in England on the 19th April 2008.

Under cross examination he agreed he was not available to travel on the 28th February as he was sick, he did not submit a sick cert for this. He did not recall a phonecall from the respondent on the 6th March 2007 nor any phone calls. It would not be unusual for him to miss a few weeks work however there was always work given to him on his return. He accepted that he had received a phonecall on the 17th April informing him that there was work available. It was put to him that the respondent had to hire a new driver because he had not been available to work, he disagreed as this driver was employed while he was there. He agreed that when he was sick he never submitted a certificate to the respondent. He did not accept that he had not been available to work through out March.

In replying to questions from the Tribunal, he had rang the respondent two or three times a week seeking work, he was told there was no work, but he knew that there was some available. He normally did continental runs, one load a week running from Saturday to Friday.

Respondents Case

A director of the company gave evidence. He and the appellant had previously worked together before he set up on his own. The appellant came to work for him.

The appellant normally drove a 2003 registered truck all the time. He had never seen the RP9 form till recently. There was work available for the appellant at the time. He himself had to do runs at this time to cover. The appellant had a habit of taking two to three weeks off and then coming back to work, when he did this he may have had to wait a week for work to be available. His office worker informed him of the letter she had given to the appellant to enable him to claim social welfare the following day. He had called the appellant a number of times over the period of his absence, but the appellant did not answer, however when he put his mobile phone on private the appellant answered and from this he knew the appellant was not capable of working at that time. During this time the appellant rang him once or twice at about 11.00 or 12.00 at night but he did not answer. He denied dismissing the appellant nor did he put him on short time.

Under crossexamination he replied that he had not given the letter in respect of social welfare much thought when it had being issued. He reiterated that the appellant was not capable of working from February through to April. He had not seen the RP9 for a while after it had been received and he had contacted his own solicitor at a later date in respect of same.

A employee who looks after the schedule of trucks and load was next to give evidence. She had rang the appellant on the 28th February 2008 offering him a load out, but the appellant was not available to work. She also rang him on the 6th March 2008 with another offer of work he again was unavailable. On the 17th April 2008 she raing him and he informed her that he had got a new job.

The appellant had called to the office on the 8th April 2008 and he requested a letter he could give to Social Welfare saying he had not worked since 22nd February 2008. She felt sorry for the appellant and issued him with the required letter. It was wrong of her to issue this letter and it is not customary for her to sign letters on behalf of the respondent. She did not remember the appellant ringing her two or three times a week seeking work. He did ring on the 4th March to say he was available but she had already allocated the loads.

Determination - RP(9 served

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

