

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee
- *appellant*

CASE NO.
MN341/2009

RP341/2009

against
Employer - *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr R. Murphy
Mr P. McAleer

heard this appeal at Monaghan on 22nd July 2009

Representation:

Appellant(s) : In Person

Respondent(s) : Mr. Michael McGrath, IBEC, Confederation House, Baggot St,
Dublin 2

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant gave direct sworn evidence that, on Friday, 9 January 2009 he was told by a director of the respondent company hereafter known as MQ, that he was being put on temporary lay off. He received a phone call later on the same day from another director hereafter known as BQ and was informed by her that he was no longer employed by the company. He was already working on a 3 day week at that stage. He immediately sought work from another employer and was told that work was available for a couple of days per week. He was asked by this employer to report for work on the following Monday 12 January 2009 and he agreed to do so. Later on, during the course of Friday, 9 January 2009 he was contacted by the manager of the respondent company hereafter known as JL, requesting that he perform work for the respondent company on Monday 12 January 2009. He replied that he could not perform those duties as he had already committed himself to

another employer. He requested his P45 from the respondent company as he was not able to claim social welfare benefit without his P45 and this was provided to him one week later.

Under cross examination he confirmed that his duties for the respondent company involved driving, maintenance and repairs. He drove heavy loads and held a Heavy Goods Vehicle license. He was the only employee who held such a license. He denied that he left work during working hours to get his car serviced without permission. He confirmed that MQ contacted him on Saturday, 10 January 2009 requesting him to work on Monday, 12 January 2009. He chose not to carry out this work as he had committed himself to a different employer for that day. He visited the respondent's company premises on a number of occasions after that but MQ refused to meet with him.

In reply to questions from the Tribunal he stated that when he met with MQ on 9 January 2009 they spoke about the economic downturn. He was told that he was being put on temporary lay off and he would be contacted in April 2009 if things picked up. He confirmed that he is now in full time employment with a different employer.

Respondent's Case

MQ, a director of the respondent company gave direct sworn evidence that he employs a total of 111 employees. The appellant was employed in his tool hire business along with 4 other employees. In September 2008 employees in the tool hire business were placed on a 3 day week. Nobody was put on temporary lay off and nobody was made redundant. There was plenty of work available for the appellant but he had not reported for work on Monday, 5 January 2009 or Tuesday, 6 January 2009. The manager of the tool hire business, JL also had issues with the appellant's quality and quantity of work and this was brought to the attention of the witness. He called the appellant to his office on Friday 9 January 2009 seeking an explanation for his non attendance at work on 5 January 2009 and 6 January 2009. He explained to him that if he was due at work he should report for work as machinery has to be delivered on time. He told him that everybody had to pull their weight and never mentioned to him that he was being placed on temporary lay off. He never told him that there was no work for him and told him to return to his workplace and do his job. The appellant left his office and it was his understanding that he was returning to his workplace.

MQ was contacted by JL later on Friday, 9 January 2009 and informed that the appellant had removed all his tools and left the workplace. MQ contacted the appellant on Saturday requesting that he deliver a machine to a customer on Monday, 12 January 2009. The appellant informed him that he could not do so as he had committed himself to another employer and MQ understood from this conversation that the appellant had gone to work for a new employer. MQ delivered the machine to the customer on Monday 12 January 2009 as he held a Heavy Goods Vehicle license.

The second witness for the respondent company, BQ gave evidence that she is responsible for administration and payroll. She has no responsibility for hiring or firing. She received a call from JL on Friday 9 January 2009 informing her that the appellant had cleared out his lorry and left the workplace. He had also removed his personal belongings. She understood from this call that the appellant had left the company and contacted him to inform him that she was cancelling his work mobile phone. The appellant called to her the following week requesting his P45 stating that he had been let go. She replied that he needed to speak with MQ as she was not aware of that.

Under cross examination she stated that she never told the appellant that he was no longer working for the respondent.

Determination

The Tribunal having heard the evidence from both parties is satisfied that a genuine redundancy situation did not exist. The Tribunal is satisfied that the appellant voluntarily terminated his contract of employment. Accordingly the claim under the Redundancy Payments Acts 1967 to 2007 fails. The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

