

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.

RP361/2009
MN364/2009

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 23rd July 2009

Representation:

Appellant(s) : Ms Helen Morrow, Citizens Information Office, 23 North Road Monaghan.

Respondent(s) : Wilkie & Flanagan, Solicitors, 8 The Hill, Monaghan, Co. Monaghan

The decision of the Tribunal was as follows:-

Respondent's Case

The first witness for the respondent gave direct evidence that he is a director of the respondent company. The company is involved in steel fabrication business. On the 4 February 2009 he told the appellant that he had to lay him off for a three week period as he had no work available. He told him that work would be available after three weeks and the appellant could return to work at that point. The witness had to attend hospital during this period and he made his workshop available to the appellant for his own private use during that period, as he was aware that the appellant carried out work repairing cars. The appellant availed of his offer and used the workshop for a number of days during this three week period.

The witness went on to give evidence that the appellant contacted his wife requesting his P45. This was required by the local social welfare office when the appellant sought social welfare benefit. The P45 was provided to him for this purpose but he was not dismissed by the respondent company. When the three week period had elapsed the witness attempted to contact the appellant to inform him that work was now available to him. When he was unable to do so by telephone he called to his house on a number of occasions but the appellant was never at home. On 24 March 2009 he sent him a letter by registered post informing him that he should recommence his

employment. The appellant contacted him the following day stating that he did not want to return to work and that he wanted a redundancy payment. The appellant was never made redundant and work was made available to him when the three week lay off period had elapsed.

In reply to questions from the Tribunal the witness confirmed that the appellant sought his job back with a new contract of employment and a redundancy payment. He offered to give him a new contract of employment but refused to pay him redundancy as he was not made redundant.

The next witness for the respondent gave evidence that she completed a form for the appellant's local social welfare office stating that the appellant was on short term lay off from the respondent company. She gave evidence of attempting to contact the appellant by telephone and in person when the lay off period had elapsed but her attempts were unsuccessful. She met with the appellant sometime after the 26 March 2009 and he requested new terms and conditions of employment and a redundancy payment. The new terms and conditions were provided to him but he failed to return and collect them. She informed him that he was not made redundant. The appellant called to her on a later occasion requesting that she sign a form for his banking purposes. She noticed that the form related to a redundancy claim and she refused to sign it as the appellant had not been made redundant.

Claimant's Case

The claimant gave direct evidence that he was dismissed on the 4 February 2009. The respondent told him that it was bad economic times. It was not made clear to him that he was being laid off for 3 weeks and he understood that he was made redundant. He was given his P45 and his P60 and he produced these documents at his local social welfare office. He never used the respondent's workshop after 4 February 2009. He has been receiving social welfare benefit since his dismissal and never had a conversation with the respondent regarding returning to work. He received no phone calls or text messages from the respondent after 4 February 2009 and he never had his phone turned off. He continued to look for work in the Monaghan area and in Northern Ireland. He did receive a registered letter from the respondent dated 24 March 2009. Upon receipt of this letter he contacted the respondent and requested new terms and conditions of employment. The respondent agreed to give him new terms and conditions of employment and agreed to contact him when they were available but never did so. He was not expecting to be paid redundancy if new terms and conditions of employment were given to him.

Determination

The Tribunal having carefully considered the evidence from both parties is satisfied that a genuine redundancy situation did not exist. 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)

