

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - Appellant

RP440/2009

Against

EMPLOYER - Respondent

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr. D. Winston  
Ms. A. Moore

heard this appeal at Dublin on 26th August 2009

Representation:

Appellant(s): Mr Brendan Carr, Siptu, Food Branch, Liberty Hall, Dublin 1

Respondent(s): Mr Denis Hipwell, Patrick O Toole, 5 Church Street, Wicklow  
Town, Co. Wicklow

The decision of the Tribunal was as follows:-

#### **Respondent's Case**

PH told the Tribunal that the respondent was a small family run construction company. The appellant commenced employment on 25 August 2003. The appellant resigned on 27 April 2005 and she was informed that he had gained alternative employment elsewhere. She was not aware if the appellant had issues with colleagues. He was given a P45 and he did not request a reference. The appellant returned to work with the respondent three weeks later. On 8 January 2007 the appellant had a serious accident on site. The appellant was paid over and above what he was entitled to when he was on sick leave. Five months after the accident a local doctor certified the appellant fit to return to work. The appellant was asked to go to an independent medical consultant to assess his fitness for work. The independent consultant found that the appellant was unfit to work on a building site due to damage to his eye and he would be a liability on cranes and heights. A medical report was compiled on 25 June 2007, a follow up report was provided on 13 July 2007 and an eye specialist report was furnished on 28 August 2007. The appellant was given copies of the medical reports. No alternative work was available for the appellant.

The respondent would have taken back the appellant if he was fit to work. The appellant then undertook a course in manual handling. In January 2008 he provided training in manual handling for seven of the respondent employees. The appellant had to remain on the respondent's books for a full year after the accident to enable him to obtain his statutory requirements and public holidays.

If the appellant had requested his P45 she would have given it to him.

In cross-examination when put to her if the Revenue Commissioners had no record of the appellant leaving she replied that she contacted the Revenue and she was informed if a P45 issued mid year that it was not taken into account. A P45 issued to the appellant and she did not know if anyone in the respondent told the appellant that his employment had ceased. She did not write to the appellant after January 2008. She knew that the appellant was never again going to be an employee. The operations manager had a discussion with the appellant regarding his status as an employee. In January 2009 she received a letter from the appellant requesting his redundancy. The appellant has not been replaced.

The second witness for the respondent, the operations manager told the Tribunal that when he was employed with the respondent he had an office in Blessington. He worked on sites and liaised directly with customers and employees. In 2005 the appellant told him that he was resigning and going to work elsewhere as a slinger banksman at a higher rate of pay. He issued a P45 to the appellant on the following Thursday. He was surprised that the appellant was leaving. He stated that the appellant was a good employee. The operations manager knew from the appellant's colleagues that the new position was not working out for the appellant. The appellant contacted the operations manager after two weeks; he requested his job back and the appellant returned to work with the respondent. In January 2007 the appellant had a very serious accident on the job. He received a letter from the appellant's doctor that he could return to work. The operations manager was concerned about this as the appellant could be a danger to himself and to others. He requested the appellant to obtain a more detailed letter and the appellant undertook to do that. He requested that the appellant attend a medical consultant. The medical report provided by the medical consultant indicated that the appellant could not under any circumstances continue working with the respondent, as his spatial judgment was impaired. The appellant could not return to work unless he was certified fit. The appellant was not happy with the outcome but he then accepted that he would be a risk to himself and to others. The appellant undertook work on roofs and scaffolding. There were no other duties in the respondent that the appellant could undertake. The appellant undertook a course in manual handling and he trained employees in the respondent.

In cross-examination he stated that the appellant and a relative who was employed by the respondent were not the best of friends. The appellant did not lodge a complaint regarding this matter. Disagreements among staff would not have been reported to the operations manager. The appellant returned to work with the respondent under the same terms and conditions that he previously had and he was not given a wage increase. In 2008 the appellant undertook a course in manual handling and he provided a training course for the respondent employees in manual handling. The respondent paid the appellant up to the end of 2007. In 2007 the appellant was part of a three-man crew. The respondent did not replace the appellant.

### **Appellant's Case**

The appellant told the Tribunal that he commenced employment with the respondent in 2003. He walked off the job in 2005 and he told the operations manager that he was not getting on with a colleague who was a relative. After two weeks the appellant stated he would return to work with the respondent if he did not have to work with his relative. He had registered with an agency but

was not assigned work. After his accident on site in January 2007 he attended an occupational therapist who informed him that he was unfit to undertake his job with the respondent. He received payment for the October bank holiday in 2008. He did not receive a P45 and he was never informed that his employment had terminated. He kept in contact with his colleagues who informed him that they had received redundancy. He sought legal advice and was informed that he was entitled to redundancy. He contacted the respondent and was informed that he was not getting redundancy. He did not believe that his employment had ceased. The operations manager kept in contact with the appellant.

In cross-examination he stated that he never received the envelope that contained his P45. He agreed that he was unfit to undertake the type of work he previously undertook. He undertook a manual-handling course.

In answer to questions from the Tribunal he stated that he has a personal injuries claim pending in the High Court. When he filed the papers in the High Court he knew that he could not return to the same job.

**Determination**

The Tribunal are satisfied that the appellant knew and conceded that he was never going to be able to return to work with the respondent. In January 2008 he was taken off the respondent books and commenced other employment. A genuine redundancy situation did not exist and his appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

