

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
RP204/2009
MN220/2009
WT87/2009

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Ms A. Gaule
Mr B. Byrne

heard this appeal at Dublin on 22nd July 2009

Representation:

Appellant: In person

Respondent: In person

The decision of the Tribunal was as follows:

Respondent's case:

The director gave evidence on behalf of the respondent. The respondent is a sports ground development company, e.g. laying football fields, golf courses, etc. He maintained that the claimant had a break in service so was not entitled to redundancy. The appellant had walked off the job on Friday 11th April 2008 and did not show for work on the following Monday 14th April 2008. He received information from one of the appellant's colleagues, informing him that the appellant had obtained a new job for less hours and more money. He did not hear from the appellant directly nor did he try to contact him. He decided that he would issue a P45 for the claimant this was dated 11th April 2008. He held on to this P45, as he had no address for the appellant, however he did return the P45 to revenue.

The appellant arrived back to work on the 1st May 2008 accompanied by his brother looking for his job back. The respondent informed him that he could start again on the following Monday. He maintained that this was a new contract of employment for the appellant. Due to a down turn in business they tried to initiate a three-day week however they eventually had to let go employees. The appellant received notice on the 2nd of December 2008 that he would be laid off on the 5th December 2008, other employees were laid off on the 12th December 2008.

Appellant's case:

The appellant gave evidence that he could not recall what had happened on the 11th April 2008 however he always agreed time off with his employer. He had asked the respondent for the three weeks off that were in question and the employer had agreed that it was at good time to take leave. He denied that he had started work with a new employer at this stage. The reason he needed this time off work was for personal and private matters. He understood he was still employed with the respondent at this stage. The appellant went to see the respondent on the 1st May 2008 to arrange to return to work on the following Monday. His brother accompanied him, as his English was not good.

In response to a question from the Tribunal as to how he had agreed the time off previously if his English was so poor the appellant agreed that he had sufficient English to agree getting time off from the respondent. On this occasion his brother accompanied him on the Friday evening, because his brother was "interested in his situation". but he had needed his brother to translate for him to return to work. His brother had not helped him to return to work as this had already been agreed with the respondent. The respondent had been a caring employer and had enquired about his private business.

Determination

While the Tribunal is dissatisfied with the evidence given by the appellant, nevertheless the onus is on the employer to establish the facts, as to whether the appellant resigned or not. This is what a reasonable employer is expected to do. In this case however the employer took third hand information as to the appellant's resignation. The employer should have made efforts to contact the appellant at this juncture to establish whether or not the appellant had terminated his employment with the respondent.

During the course of the hearing the respondent agreed with the Tribunal that he had not dismissed the appellant, nor did he tell the appellant when he returned in May 2008, that it was a commencement of a new employment contract.

In these circumstances the Tribunal find that the appellant is entitled to a lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

| | |
|--|-------------------------------|
| Date of Birth: | 15 th January 1974 |
| Employment commenced: | 17 th May 2005 |
| Employment ended: | 5 th December 2008 |
| Gross weekly pay: The Tribunal assess the gross weekly pay based on the statutory documents provided to be | €458.08 |

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The appellant received notice on the 2nd December 2008 and his position was terminated on the 5th December 2008. Accordingly, the Tribunal determine that he is entitled to payment of €644.00 being the equivalent of seven days pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

During the course of the hearing it was established that the appellant work was not covered by the Construction Registered Employment Agreement, therefore the Tribunal dismisses his claim under the Organisation and Working Time Act 1997

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)