

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**  
EMPLOYEE - *appellant*

**CASE NO.**  
RP1346/2008

against  
EMPLOYER - *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Mr P. Clarke

heard this appeal at Sligo on 9th June 2009

#### **Representation:**

Appellant(s) : Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

Respondent(s) : In person

The decision of the Tribunal was as follows:-

#### **Appellant's Case:**

The appellant gave evidence. He commenced employment with respondent as a scrap metal and timber driver in February 2005. His wages increased over time from € 350 per week to € 100 per day.

In mid November the owner and Director of the respondent company informed him that there would be no more work for him by the end of the week. The owner would retain 2 trucks for the company's own work. The meeting took place in the yard with only the owner and himself present.

He endeavoured to obtain one week's work in December since he was let go and moved to Dublin in April in order to start a new job.

On cross-examination he again stated that he was paid € 100 per day but was not aware if this included a subsistence payment. He was paid into his bank account and received a weekly written payslip. He was only made aware he was entitled to a redundancy payment when he went to work in Dublin in April 2008. He had not asked the company for redundancy and did not receive a social welfare payment while working for the new employer in December.

He had been informed another employee of the respondent had taken his job he had for one week in December. He agreed that another employee had acted as translator for him in work but on the day in question he knew what the owner meant and did not need it to be translated. This person was not present

in the yard on the day of the meeting.

He agreed that he, and some other, had received their P45s in July 2007 but returned some time later to work for the respondent. At this time he had returned to Poland for leave and had not requested his P45 to go home for domestic reasons. When asked he said that he did not leave the job of his own free will in November and had no job to go to.

When asked by the Tribunal he said that the leave in July 2007 was planned and agreed he had taken his leave allocation before that time.

**Respondent's Case:**

The owner and Director of the respondent company gave evidence. In July 2007 the appellant took 12 days holidays to go home for domestic reasons, he wanted more but was told he did not have them worked up. A colleague acted as interpreter for the appellant that day, he often did. The appellant requested his P45 for tax reasons. He agreed to it and the appellant left on July 27<sup>th</sup> 2007.

A month later he returned and asked for a job. The witness said that he would agree to it subject to the company's insurers agreement. He had discovered the appellant had 2 serious accidents before he had commenced working for him.

At the start of November he told the appellant that the company was ceasing its general haulage at the end of November and told him work would be limited to their own waste and recycling. The appellant told him he did not understand. He asked the colleague who acted as interpreter to explain there would not be a five-day week from then on. The appellant told him he was finishing work on Friday. The witness said that he heard that the appellant had gone to work for the company that that acquired the contract his company had lost.

In January / February the company needed drivers. He tried to contact the appellant but to no avail. In March 2008 staff were let go and paid redundancy.

On cross-examination he said that he never told the appellant that he had been dismissed or made redundant. He stated that the meeting in November had not taken place in the yard but in adjoining development and there were 3 people present, the appellant, a colleague and himself.

**Determination:**

Having heard all the evidence adduced by both parties the Tribunal finds that there was no redundancy situation in this case. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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