

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

Employee

-appellant

CASE NO.

RP303/2007

against

Employer

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. Hayes BL

Members: Mr. F. Cunneen  
Ms. C. Byrne

heard this appeal in Dublin on 17 April 2009

Representation:

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Appellant(s) :

In person

Respondent(s) :

Mr. Conor Bowman BL instructed by  
Gill Traynor, Solicitors, 39-41 Sundrive Road, Dublin 12

The decision of the Tribunal was as follows:-

The appellant sought a redundancy payment based on service from 18 December 2001 to 18 February 2007. He claimed that he was made redundant and that, when he asked that a redundancy form be signed, he was told that he was not entitled to redundancy but was not told why he was not so entitled.

In response, it was stated at the Tribunal hearing that an employer (hereafter referred to as DC) had engaged the appellant and other men (under a contract with a local authority) to provide security at a number of locations. When DC died his widow (hereafter referred to as WX) was contacted and asked to maintain the contract until a new security company was found. WX did this paying from funds of DC's estate. The contract was put out to tender.

Giving sworn testimony, the appellant said that he had worked (in static security) at the Fire

Training Centre on the Malahide Road. He did not work for DC in any other place.

The appellant told the Tribunal that he had gone to a citizens' advice centre. DC had died. WX had taken over. The work went out to tender. A new company was taking over. This new company was to be a "caretaker" company until the contract went for tender again. The appellant started with this company in February 2007. It "was taken over again" in January 2008 and the appellant was asked to stay on by the new company. The Fire Brigade wanted the appellant to stay on with this second new company and the appellant was (on increased pay) still with the said company at the time of the Tribunal hearing.

Questioned about February 2007, the appellant replied that he was told that another company would be taking over and that he (and his colleagues) had the option of being kept on. He went to a citizens' information centre who advised him to make a claim after he had talked with WX and been told that he was not entitled to redundancy. Having heard no more from WX, he brought his case to the Tribunal.

Under cross-examination, the appellant agreed that he was still doing the same job and that he had been in continuous employment since December 2001. When it was put to him that WX had asked for him to be kept on the appellant replied that he had thought that it was the Fire Brigade who had done that.

Questioned by the Tribunal, the appellant confirmed that he had worked for the "caretaker" company and that the secretary in the Fire Brigade training centre had said that she had been on to the new company and that there was a desire to keep him on. The appellant confirmed that he had worked for three different employers in the same job. He stated to the Tribunal:

"It was left to me and I said yes to keeping working. I'm happy where I am with what I'm doing. I got no option about redundancy. I was told that I was not entitled."

The appellant told the Tribunal that he just wanted what was due to him.

Giving sworn testimony, WX said that she was the personal representative of DC who had died in September 2006. DC had been a sole trader who had employed four or five people. There was a contract with Dublin City Council Fire Brigade. The appellant had worked on a Fire Brigade site. After the death of her husband the Fire Brigade did not know how to proceed regarding the contract. WX was supposed to take the security company licence in her own name but she just wanted to finish up. She said that she would speak to the men who had been employed at the Fire Brigade location. They were open to continuing to do the job.

WX spoke to the Fire Brigade about the men who had worked for DC and was told that the Fire Brigade would try to have these men kept on. Two did not get employment. The appellant stayed on.

Regarding the men not kept on, WX said that the business had no money but that she had said that she "would sign the form for them to get money from the Department". She received a letter from a security company for the appellant to start after 18 February 2007. The Fire Brigade knew the appellant to give him a good reference.

Given an opportunity to cross-examine, the appellant said that he had not known about a good reference being given to keep him in employment but that he did not disagree in any manner with what WX had said.

**Determination:**

Given that the appellant provided good service, received a good reference and continued to be employed doing the same job after the death of an employer, the Tribunal finds that he did not become redundant within the meaning of the Redundancy Payments Acts, 1967 to 2007. The appeal under the said legislation fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

