

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.
EMPLOYEE RP164/2009
against
2 EMPLOYERS
under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. Clancy

Members: Mr G. Phelan
Mr. T. Kennelly

heard this appeal at Limerick on 29th October 2009

Representation:

Appellant(s): Ms. Angela Sciascia, Citizens Information, Weigh House,
Market Yard, Newcastle West, Co. Limerick

Respondent(s): Mr. Owen McMahon Solicitor, Newcastle West, Co Limerick

The decision of the Tribunal was as follows: -

Respondent's Case

The respondent XXX told the Tribunal that in July 2008 he had three to four employees. The appellant was employed on 17 February 2004 and undertook concrete work. The appellant was an excellent worker and in 2005, 2006, and 2007 he worked full time. In June 2008 he undertook contract work for a construction company. The appellant told him that he did not like to work for this construction company as he had an issue previously with a foreman there. There was no other work available for a couple of weeks. A week later the respondent had work available again. The respondent was informed on Sunday night 13 July 2008 that the appellant was not available for work. The appellant did not report to work on 14 July 2008. He telephoned the appellant on the following Wednesday to establish what the situation was. The appellant told him that he needed time off and he informed the respondent that he should get someone else to deputise for him. He had full time work for the appellant on 16 July 2008. He told the appellant to contact him when he was available to return to work. The next contact he had with the appellant was in August 2008 when the appellant sought his P45. The appellant's son worked with the respondent for one week. The appellant then telephoned him in November 2008 and told him that it would suit him if he could get his redundancy and that if he was agreeable to this that he would receive two thirds of it.

He told the appellant that he had work and it was not a redundancy situation. Subsequently he contacted the appellant and he informed him that the matter was being dealt with by his accountant.

In cross-examination he stated that he had plenty of work in May 2008. The work pattern had not changed in 2008. A medical certificate was shown to the Tribunal, which indicated that the appellant suffered from neck pain and was certified ill from 10 April 2008 to 21 April 2008. He did not speak to the appellant on the 13 July 2008. He telephoned the appellant on 16 July 2008. He was not familiar with an RP50 form. When the appellant telephoned him about this he was with someone at the time but he returned his call. He assumed that the appellant was going to return to work. A P45 issued to the appellant at the end of August 2008.

In re-examination he stated that the appellant was not available to undertake work with a construction company as he had a disagreement with them. The appellant was a good employee and he tried to accommodate him. He would have taken him back in June/July 2008. He was not aware that the appellant was involved in an accident until the Tribunal hearing.

In answer to questions from the Tribunal he stated that in July 2008 the appellant needed time off and he claimed unemployment benefit during this time; he presumed that he signed a document to enable the appellant obtain unemployment benefit. He told the appellant to contact him as soon as he could return to work. The appellant was number three in the seniority list. He had two full time employees who were machine drivers and the appellant was able to undertake repairs. When the appellant was absent in July 2008 XXX drove the machine himself. In November 2008 he told the appellant that he had work for him. The appellant undertook a series of jobs and he did not have a position for him immediately. When work was slack the employees undertook repairs on machines.

YYY told the Tribunal that she was a director of the respondent company. The appellant commenced employment in 2004. On Sunday 13 July 2008 between 9.30p.m. to 10.30pm. she received a telephone call from the appellant who informed her that he was unable to attend work the next day Monday 14 July 2008. She informed her husband of this. On the 30 August 2008 the appellant requested his P45 and the respondent's accountant sent it to him. The appellant did not mention redundancy. She stated that her husband came home from work one day and told her that the appellant wanted his redundancy.

In answer to questions from the Tribunal she stated that it was her understanding that the appellant wanted to leave the respondent. The work that the employees undertook was seasonal. The respondent had three full time employees in August 2008 and the respondent now has two full time employees. The respondent had never made an employee redundant.

Appellant's Case

The appellant told the Tribunal that on one occasion while he was undertaking a delivery for the respondent he stopped the lorry and as he opened the door of the lorry he tripped on his shoelace and fell on his shoulder. He mentioned to his employer that he had got a bad fall. He went to the doctor and was advised to stay off work for a couple of days. He had a disagreement with one of the foremen in a construction company that the respondent undertook work for. He did not think that the respondent was a great company to work for and he was expected to work without proper clothing. On 16 July 2008 he spoke to one of the employees who told him that work was very scarce. He sought job seekers benefit and his employer signed the form to enable him obtain this. He contacted his employer regarding an RP50 form and his employer told him that his accountant

had never heard of this form.

During this time two full time and two part time employees were employed. Employees were let go in June 2008. The two employees that were senior to him were employed with the respondent more than two years. He sought advice regarding his situation in November 2008.

In cross-examination he stated that he telephoned his employer after November 2008 regarding his redundancy. The employer was with someone and he told him he would return his telephone call.

He asked XXX if there was anything happening and he replied no. He agreed that he was concerned about his mortgage and he had to obtain his redundancy. He was advised to seek redundancy, as XXX had no work for him. On 16 July 2008 he recalled telephoning XXX and he asked him if there was any work. XXX did not ask him to return to work and he told him that there was no work at that time. He did not have records of the days that he undertook work for the respondent in May 2008. He did not deny that he had a disagreement with a company that the respondent undertook work for.

Determination

On the evidence adduced the Tribunal is satisfied that a genuine redundancy situation existed and the appellant's job was not replaced.

The appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of birth	14 March 1954
Date employment commenced	17 February 2004
Date employment ended	11 July 2008
Gross weekly pay	€625.00

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

Please note that there is a weekly ceiling of €600 on all awards made by the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)