

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
RP562/2010

against

EMPLOYER
- *respondents*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Letterkenny on 8th October 2010

Representation:

Appellant: In person

Respondent: Ivan Toner BL instructed by Murnaghan Fee, Solicitors, Boston Chambers, Queen Elizabeth Road, Enniskillen, Bt74 7ja

The decision of the Tribunal was as follows:

Appellant's Case

The appellant gave direct sworn evidence he commenced employment with the respondent in October 2006. In March 2009 he was laid off for two weeks, he received a letter from his employer stating this, which he used to obtain social welfare payments. On the 27th July 2009 he finished up work for two weeks annual leave. On his return he telephoned his employer and was informed that there was no work available for him that he would have to sign on. His employer told him that they were looking for work, however he has not been offered work since July 2009. He denied he received a letter from his employer informing him of this layoff. When he went to Social Welfare to sign on, they informed him he would need a letter, however they would contact his employer directly. He also visited the Revenue's office as he thought he had over paid his PAYE but they informed him he had paid very little. Revenue advised him to get his P45; he telephoned the respondent and requested this. He had no alternative work at this stage. He proceeded to bring a claim under the Payment of Wages Act 1991 to the LRC, in relation to his pay and tax deductions.

Under cross examination he was referred to a letter addressed to “Dear Employee” informing him that he was being laid off on the 24th July 2009, it was put to him that five employees had finished the same day as him and all had received this letter. He denied this and stated that two other employees had been laid off on the same day as him. He re-iterated that Revenue had told him to obtain his P45. He was referred to a letter dated 24th September 2009 that encloses his P45 for him to give to his new employer. The appellant said he had no copy of the letter, he had not mentioned any new employer when he telephoned the respondent for his P45. However if the respondent had enclosed this letter with his P45 he would have to accept he received it. The respondent produced a photocopy of his diary entry of 3rd September noting the telephone call from the appellant, however he did not have the original with him at the hearing. He had served the RP9 on the respondent on the 2nd December 2009 as he had been advised that he had up to eleven months to serve same. At this time he was available for work as he had not obtained new employment. When he was laid off the company had informed him that they would contact him if any work was available.

Respondent’s Case

A director gave direct sworn evidence. At the time of the appellant’s lay off a car park they were working on was coming to an end, they were pricing for work but nothing was forthcoming. The letter of lay off was given to the appellant along with four other employees on the 1st July 2009. He spoke with employees on an individual basis and informed them they would have to take this letter to social welfare to enable them to sign on. A lay off had happened in the previous March and they had all been given similar letters. In September 2009 the appellant had telephoned him and requested his P45 as he had work lined up. During this telephone call the appellant had not asked him if they had work available. He had organised the P45 to be issued along with a letter. The claimant did not dispute the contents of the P45 covering letter at the time of issue. He did not receive any correspondence from the appellant in relation to redundancy.

Under cross examination the appellant disputed with this witness the five employees who had received the letter stating that they were being laid off with effect of the 24th July 2009. The appellant maintained that he, SL, KM and JD were left on site and received no letter. The witness disputed this and that the appellant, SL and JD received this letter while KM was not laid off.

In reply to questions from the Tribunal, he did not ask the appellant where he was commencing work when he requested his P45. He did remember seeing the RP9 however he could not make out the signature on it and did not know who it was from. He was not familiar with the procedures surrounding the RP9. He listed the five individuals who had received the letter in July 2009, and confirmed that two of these had left before the 24th July. He would have noted the five individuals in his diary.

Determination

At the hearing there was a conflict of evidence between both parties, the Tribunal carefully considered the evidence adduced and produced at the hearing. The Tribunal found the appellant to be credible in his evidence and therefore the appeal under the Redundancy Payments Acts, 1967 to 2007, and finds that the appellant is entitled to a redundancy lump sum based on the following criteria:

Date of Birth: 5th November 1964
Date of Commencement: 28th October 2006
Date of Termination: 24th July 2009
Gross Pay: €600.00

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)