

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
RP249/2009
MN271/2009

against

EMPLOYER - respondent

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. S. McNally

Members: Ms. M. Sweeney
Ms. P. Doyle

heard this appeal in Cork on 28 October 2009

Representation:

Appellant(s):
Mr. Pat McGrath, SIPTU, Cork No. 3 Branch,
Connolly Hall, Lapps Quay, Cork

Respondent(s):
No legal representation

The decision of the Tribunal was as follows:-

The written appeal stated that the appellant was seeking redundancy and minimum notice payments because the respondent could not provide him with work.

The written defence contended: that the appellant had not been redundant; that the appellant had not contacted the respondent requesting work even though throughout his employment he had been told that this is what he needed to do when out of work; and that the appellant simply had not wanted to work for the respondent.

At the Tribunal hearing, GD (the respondent's group operations manager) said that the respondent

was not a construction company but rather that it hired out men to construction companies. The respondent paid men by the hour and charged clients by the hour. The men were under the control of the client. The number of men on the group's books had gone from about two hundred in 2004-5 to about thirty in 2009. GD said that the group did pay a lot of redundancy and did not contest every redundancy appeal.

The appellant's representative stated that the appellant was a general operative who had commenced working for the respondent in July 2004. However, on Thursday 10 July 2008 the appellant said that he could not work overtime because of a personal engagement. That evening, DH from the respondent rang the appellant and told him that there was no work for him because he did not do overtime. The next week the appellant rang DH looking for work but DH did not take the appellant's call. Subsequently, the appellant got a call from CB from the respondent who said that things were quiet and that there was no work but that the respondent would contact the appellant when there was work. This never happened.

In his sworn testimony the appellant said that on Thursday 10 July 2008 he had already done three days with HLM (a client company of the respondent) when he had asked what time he would finish on that day and was told that he would finish at 5.00 p.m.. He had a meeting that evening. He asked about the Friday and was told that they would start at 7.00 a.m. and end at 3.00 p.m..

At about 4.30 p.m. on Thursday 10 July there was a phonecall to HLM and a request was made that overtime be worked that evening. The appellant said that he could not stay. He finished at 5.00 p.m. and was at home at 6.00 p.m. or 6.30 p.m..

The next day, DH rang the appellant very angry because the appellant did not stay after 5.00 p.m. and saying that the appellant had to stay longer. The appellant replied that DH had had no problem with him but that, on this occasion, the appellant had had a meeting and had not been able to stay on.

DH then said that there was no more work for the appellant whereupon the appellant said that he had spoken to HLM about Friday (11 July) but that it had been too late to cancel his meeting on Thursday evening.

On Friday 11 July the appellant collected his things from HLM's site. HLM asked him what was the problem whereupon he told them that DH had finished his employment.

The next week, the appellant tried to ring DH but could not get him. DH did not ring him back. The appellant rang CB (of the respondent) who said that things were quiet. This was the appellant's last contact with the respondent.

The appellant denied that anybody from the respondent had rung him on 15 July 2008 offering work.

When it was put to the appellant that the respondent had received solicitors' letters (which had been sent on the appellant's behalf) the appellant said that, when no-one had called him about work, he had spoken to his wife and had gone to solicitors. (The appellant's wife was working for solicitors.) However, the appellant's solicitor had ultimately sent him to seek trade union assistance whereupon he embarked on the appeal that was now before the Tribunal.

The appellant told the Tribunal that he had previously done overtime for the respondent but that he had never previously been unavailable to stay on to do overtime. He stated to the Tribunal that he wanted to work rather than collect state benefits.

GD (the abovementioned group operations manager for the respondent) now stated that it seemed to be alleged that the respondent had not kept the appellant because he had refused to do overtime but that, in fact, the respondent's client (HLM) had told the respondent (by an order from Galway) that it had no further need for the appellant. Although the assignment was to be on a Wednesday, Thursday and Friday HLM had rung from Galway on Thursday afternoon to finish with the appellant.

It was put to GD that the respondent's written submission to the Tribunal had stated that the appellant was to go to work on Friday 11 July 2008 but had not showed up. GD replied that this had been cut short by the client (HLM) and that he "should have clarified it better". Attempting to clarify orally at the Tribunal hearing, GD said that the appellant had not been due to work on Friday 11 July 2008 having been finished up on 10 July 2008. GD added that the appellant had had "a superb record with us".

Determination:

Having considered the submissions made and evidence adduced, the Tribunal finds, under the Redundancy Payments Acts, 1967 to 2007, that the appellant is entitled to a redundancy lump sum based on the following details:

Date of birth:	06 August 1975
Date of commencement:	27 July 2004
Date of termination:	10 July 2008
Gross weekly pay:	€650.00

It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.

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

In addition, the Tribunal awards the appellant the sum of €1,300.00 (this amount being equivalent to two weeks' gross pay at €650.00 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)