

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
EMPLOYEE - appellant

CASE NO.  
RP421/2009  
MN421/2009

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: Mr. L. Ó Catháin

Members: Mr. D. Hegarty  
Ms. H. Kelleher

heard this appeal in Cork on 27 November 2009

Representation:

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Appellant(s) :

Mr Jan Jaroslaw Potocki, Polish English Translation,  
"Pilawa", Office 19, 21-23 Oliver Plunkett Street, Cork

Respondent(s) :

No legal representation

The decision of the Tribunal was as follows:-

In the appellant's written appeal to the Tribunal it was alleged that his employment with the respondent, which commenced on 14 March 2005, ended without notice when he was made redundant on 14 July 2008.

The respondent's written defence stated that the appellant had started with the respondent's principal (JOC) in September 2006 when he had given a CV stating that he was a plasterer. However, the appellant was not a plasterer and was offered a trainee position. It was conceded that the appellant had not had a written contract but it was argued that the appellant only had to ask if he wanted one and that the appellant had had no problem with having an oral contract until he left.

As to whether or not the appellant had been made redundant, JOC wrote that this was a complete fabrication. On an ongoing basis, the appellant and two other members of staff were told about how much work the respondent had. In August 2008 JOC told all three that the respondent had no work for approximately three to four weeks. After that period JOC had a job commencing about he informed the appellant. However, JOC was told that the appellant would only come back if he was paid "under the table". JOC claimed to have witnesses to whom the appellant had told "the same story".

JOC also claimed to have cheque stubs from after August 2008 and wrote that the appellant had never asked for redundancy because he had left "by his own free will". The appellant was asked back on more than one occasion and worked for JOC "on and off" up to December 2008. This was on the company P35.

At the commencement of the Tribunal hearing the appellant's rep confirmed that the appellant, a non-national, had enough English to testify.

Giving sworn testimony, JOC (the abovementioned principal of the respondent) said that the appellant had commenced employment with him on 4 August 2006 but that he had laid him off around July 2008. The builders' holidays were the last two weeks of July. The week before the holidays JOC had no work. JOC had three employees (the appellant, L and W). Two to three weeks later JOC offered work. They all came back but the appellant said that he could not work unless "under the table" because it would not be worth his while. The appellant did not accept the work but did subsequently work for JOC "a few times" when JOC was "stuck".

In cross-examination, JOC did not deny that he had given the appellant a P45 when laying him off even though it was put to him that he should have given the appellant a letter. JOC said that the respondent had no work at that time but that he had told the appellant that they would have work in a few weeks.

JOC said that he did duly phone the appellant and offer work. When it was put to him that the appellant said that JOC did not do this, JOC replied: "He's lying."

JOC now showed cheque stubs to the Tribunal to show payments to the appellant later in 2008 (subsequent to the lay-off) between September and November 2008. When the Tribunal put to him that there was nine weeks' work involved JOC replied that the cheques were not all for full weeks and that they were sometimes just for a few days. Asked if there was now work again, JOC replied that it was "busy enough" but that "things have changed" regarding whether he might wish to offer work to the appellant.

Giving sworn testimony, L (an abovementioned employee) said that he was an apprentice plasterer and that in July 2008 work was "drying up" to the point that, when the holidays came, they had no work and had to get P45s to go to Social Welfare.

After the holidays they (L, the appellant and W) were all brought back. L went to work full-time for the respondent and was paid by the respondent. However, Social Welfare was paying for the appellant's house and for the fact that he had a wife. L thought that W left at that time. L was still

working for the respondent.

L told the Tribunal that he (as well as the other two) had got a P45 when he was laid off but that, when he was offered work again, he had rung Social Welfare and said that he was going back to work full-time.

In cross-examination, L said that they went back after about three weeks and that he did not know what W was doing now. L added that the appellant had been offered a full-time job back but had not taken it and that this was perhaps three weeks after the P45. The appellant had said that he would get more from Social Welfare because Social Welfare was paying for his house.

Before giving sworn testimony, the appellant was specifically asked if he had enough English and replied that he did. He confirmed that the respondent was ringing him and asking him back after two weeks. This was in mid-August 2008. The respondent had previously said that it had no more work. He had worked as a helper. He supposed that W had not gone back because there was no work. He (the appellant) had been still on Social Welfare but had been looking for a job. He had not asked for redundancy but he had thought that the respondent would give it. He did not know if W had got redundancy.

(At this point in the Tribunal hearing, JOC interjected that he had a letter from W but the appellant's repx objected on the grounds that as not present to give sworn testimony.)

In cross-examination, it was put to the appellant that JOC had rung to ask him back to work and that the appellant had said that it was not worth his while. The appellant replied that this was not true. It was put to the appellant that he had had no problem about going in to work but that he had said that all he wanted was cash. The appellant replied that he had not said that.

Questioned by the Tribunal, the appellant confirmed that he had subsequently gone back and worked for the respondent but said that he had continued to receive social welfare even though the Tribunal had seen cheque-stubs up to November 2008. He said that he was now unemployed and still in receipt of social welfare. He told the Tribunal that he had received his holiday pay but that he had not received a minimum notice payment from the respondent.

In a closing statement, JOC stated that he had given the appellant no notice money and that he had kept the appellant informed as to what was happening regarding the work before the work ended on Friday 11 July 2008.

### **Determination:**

Having considered the evidence adduced, the Tribunal noted that the respondent had offered the appellant a return to work. The Tribunal also took cognisance of the evidence given by an employee who did return to work for the respondent.

The appeal lodged under the Redundancy Payments Acts, 1967 to 2007, fails because the Tribunal was unanimous in finding that it was not satisfied that the respondent was in breach of the said legislation.

The claim lodged under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails because the Tribunal was unanimous in finding that it was not satisfied that the respondent was in breach of the said legislation.

Sealed with the Seal of the  
Employment Appeals Tribunal

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