

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE

CASE NO.  
RP1196/2009

*- appellant*

against  
EMPLOYER

*- respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Mr M. McGarry

heard this appeal at Castlebar on 19th November 2009

#### **Representation:**

Appellant(s): Fiona McAllister, McDarby & Co, Solicitors, Ballinrobe, Co. Mayo

Respondent(s): Michael G. Bohan & Co, Solicitors, 7 Teeling Street, Ballina, Co. Mayo

The decision of the Tribunal was as follows:-

At the outset the Tribunal went through the details on the T1A form. The respondent did not agree with the date of February 2<sup>nd</sup> 2009 as the date his employment ended.

#### **Respondent's Case:**

The Director and Secretary of the respondent company gave evidence. The appellant commenced employment with the respondent company on April 18<sup>th</sup> 2005 as a General Operative.

In December 2008 he returned to his homeland for Christmas and returned in February 2009. During the time of his time off one of the machines the appellant worked on broke down. The maintenance contract for the four machines, one of which the appellant worked on, was with a company in Switzerland. The part was ordered. Also during this time the night shift ceased and staff were moved to the day shift, as it was not economical to continue it due to the downturn in the economy.

When the appellant returned to work he was informed the machine was broken and the company tried to get work for him but they had no work for him until the machine was repaired. This was explained to him at a meeting where a friend came with him to interpret. The appellant was never

told there was no job for him. He agreed he had typed a letter dated February 23<sup>rd</sup> 2009, as requested by the appellant, stating there had been no work for the appellant since his return to Ireland on February 2<sup>nd</sup> 2009 and could not confirm when the machine would be repaired or when there would be work available for him.

The witness explained that the Swiss employee that repaired the company's machines had to go into National Service in Switzerland and was not available to repair the machine until April even though the part had arrived in March.

He received an RP9 form from the appellant dated March 10<sup>th</sup> 2009. He signed off on the form but they had not laid him off. On March 26<sup>th</sup> 2009 he wrote to the appellant asking the appellant to attend the workshop on Tuesday March 31<sup>st</sup> at 7.30 a.m. The letter was sent by registered post but was returned marked (uncollected). The witness said that he knew the appellant was still in Ireland as he had seen him. He again wrote to him on April 6<sup>th</sup> 2009, by registered post, requesting him to attend the workshop on April 9<sup>th</sup> 2009 and *"that failure to do so would imply that you no longer wish to work in (the company)"*. He never heard from the appellant.

On May 19<sup>th</sup> 2009 he again wrote to the appellant by registered post stating the company had returned the completed RP9 form to his address confirming they did have a period of employment of not less than 13 weeks available to him within four weeks of March 4<sup>th</sup> 2009. As he had failed to contact the company the respondent was terminating his employment effective from March 29<sup>th</sup> 2009. His P45 and monies due to him were enclosed.

The witness said that the appellant must have picked up the letter and cheque as staff had seen him around. There was a job available and another member of staff had to cover the appellant's job. There was never an intention to lay the appellant; he was a very good worker. He stated that he had been aware the appellant's fiancé had got a job in Belgium in January / February 2009 and was also aware the appellant was out of the jurisdiction from July 2009.

On cross-examination he stated he signed the RP9 form on March 10<sup>th</sup> 2009 and the invoice for the machine repairs was April 14<sup>th</sup> 2009. He stated that when he wrote the letter as requested by the appellant for the Department of Social and Family Affairs he knew that the part for the machine was due by the end of March. He was not aware if anyone contacted the appellant by telephone when he had not made contact with the respondent.

When asked, he said that someone had contacted him on the appellant's behalf to see what was going on. He refuted that the appellant had been a pest. When asked if he had received an RP77 form on April 21<sup>st</sup> 2009, he replied that he did not have a copy of it on the day of the hearing but accepted the appellant's representative had a certificate of posting. When put to him that he had spoken to someone from the Citizens Information Centre on behalf of the appellant on May 13<sup>th</sup> 2009, he replied that he was not sure of the date. He stated that he had decided to terminate the appellant's employment after he had not replied to two registered letters to resume work.

When asked by the Tribunal, he said that the appellant had made contact on 2 or 3 occasions to see if the machine was fixed but was informed they were waiting on the part. He was not the longest serving member of staff.

The respondent's accountant gave evidence. She was aware the machine had broken down. The appellant had attended the office with his partner on a number of occasions. She had informed him

that in future he was to wait at reception for her as the office contained some sensitive financial information. He was informed there would be work available for him when the machine was fixed. He had asked the witness for the letter for the Department of Social and Family Affairs.

Two registered letters were sent to the appellant, one was returned 'not collected'. He never telephoned the company. Her colleague sent the appellant his P45 and it was she that had seen him in the Post Office.

On cross-examination she stated she had not rang the appellant updating him on the machine but he had been written to. She was not aware, at the time, if he was in Ireland. A staff member from a sister company was taken off-site to cover the appellant's position. He had been with the company sine 2003 / 2004.

**Appellant's Case:**

The appellant's representative gave a submission on behalf of her client. The appellant returned from holiday to be informed his machine was broken and the night shift was gone. He constantly contacted the respondent to see what was going on. He had no written correspondence from the respondent until April 6<sup>th</sup> 2009. No one from the company contacted him by telephone to inform him what was going on.

She stated the respondent's Director had admitted speaking to a member of the Citizens Information Centre on behalf of the appellant but could not say if her told her there was work available for the appellant. Four machines were in operation in the company, six staff were on the shift and the appellant was the only one let go. He was not informed there was work available for him. The appellant remained in Ireland until July 2009.

**Determination:**

The Tribunal have carefully listened to the evidence and submissions given by both parties in this case. The respondent tried to make contact with the appellant on two occasions by registered post to return to work. One letter was returned 'not collected' the other letter was not returned. The second letter informed him that if they did not receive a reply from him it would imply he no longer wished to work for the company. Having not heard from the appellant the decision was made to dismiss him.

The Tribunal finds that the appellant left of his own volition and therefore was not made redundant. Accordingly, his appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)