

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
RP699/2009

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P Hurley

Members: Mr J Redmond
Ms H Henry

heard this appeal at Loughrea on 16th November 2009

Representation:

Appellant(s): Mr Dan Sheilds
VP Shields
Solicitors, Block 6 Liosbaun Business Pk, Tuam Road, Galway

Respondent(s): Mairéad McKenna BL
Emer Loughnane
Horan & Son
Solicitors, 23 Eyre Square, Galway

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant commenced his employment in August 2002 as a bodhrán maker. The appellant stated that he had not received a written contract of employment or written terms and conditions.

On the 23rd December 2008, the last day before the Christmas holidays, the appellant came to work at 8am expecting to work for a half day. At 10 am he was given an envelope by the manager, which contained one week's wages and a letter. There was a small note on the outside regarding holiday pay. The letter stated that the appellant's work was temporarily on hold and that the employer expected to have work for him within weeks. The appellant contended that he had not received any prior notice of the lay-off.

The appellant was surprised by the letter and a 'small bit annoyed'. He was upset that the owner was not there to talk to him and that the manager could tell him nothing more. The appellant contended that he waited until 12pm when he was given a cheque for his holiday pay and then left. He denied slamming down his keys or acting aggressively towards other staff members.

He contacted the accounts person a few weeks later seeking his P45. He was not given any indication that there was work available or when it might be available. He was not informed that in the company's eyes he had resigned.

During cross-examination the appellant agreed that he had mainly been working on the managing director's house and only made bodhráns on some days. He denied that he reacted angrily to the notice of temporary lay-off or that he raised his voice. The appellant contended that the managing director was not on the premises and had not heard them.

The appellant agreed that another employee had been laid off at the same time and had since returned to work for the company. The manager had left and set up his own business. He had not written to the managing director seeking a redundancy payment. He agreed that he had removed his digger from the managing director's site.

Respondent's Case:

The managing director of the company gave evidence that the business was quieter during the winter months and that he was having cash-flow problems in December 2008. He kept his employees working during the winter months doing some construction work for him. In December 2008 he realised he wouldn't be able to pay the wages in January 2009.

The managing director contended that work finished up on Christmas Eve and not the 23rd December as the appellant had stated. He contacted the Social Welfare office that morning and was told to give the employees a note regarding the lay-off. He contended that he hadn't spoken to the employees about it as he was afraid of the appellant, as he had walked out previously. He did not speak to the other employee either.

The managing director contended that he was present, in another room, at the time when the appellant was given the note regarding the lay-off. He contended he heard raised voices, one of which belonged to the claimant. The claimant sought his P45 immediately.

When the appellant removed his digger from his site, the managing director felt the appellant didn't want anything more to do with him. He believed the appellant had left his employment. He did not receive any claim for redundancy from the appellant.

The second employee on lay-off returned on the 2nd February 2009. The managing director had not contacted him; he contacted the managing director and then returned. The business picked up in February 2009 as the managing director secured a new contract and he contended that there was plenty of work.

Determination:

The Tribunal finds that a genuine redundancy situation existed and that the appellant's position was not replaced. The appellant was not dismissed nor told that he was being made redundant. However, the Tribunal cannot find in favour of the appellant as he did not comply with section 12

(1) of the Redundancy Payments Act, 1967:

12. —(1) An employee shall not be entitled to redundancy payment by reason of having been laid off or kept on short-time unless he gives to his employer notice (in this Part referred to as a notice of intention to claim) in writing of his intention to claim redundancy payment in respect of lay-off or short-time.

Accordingly, the appeal under the Redundancy Payments Act, 1967 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)