

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

EMPLOYEE -*Appellant*

against

EMPLOYER -*Respondent*

under

CASE NO.
RP724/2008
MN783/2008
WT351/2008

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Ó Riordáin B.L.

Members: Mr. J. Hennessy
Mr. J. Dorney

heard this appeal at Carlow on 12th November 2009 and 21st January 2010

Representation:

Appellant: In Person

Respondent: The Managing Director of the company

The decision of the Tribunal was as follows:

The appellant gave evidence with the assistance of a Tribunal appointed translator.

It was agreed between the parties that the appellant commenced employment with the respondent on 4th November 2004.

Respondent's Case:

Giving evidence the Managing Director stated that on 12th October 2007, he informed six employees (including the appellant) of the possibility of a lay-off due to a decrease in work. The six employees were based on the same site. The appellant and some of his colleagues were not proficient in the English language so the Managing Director ensured that another employee translated, as was the usual practice. In or around the 25th/26th October 2007 the Managing Director informed the appellant and his five colleagues that they were placed on temporary lay-off effective 26th October 2007.

The appellant did not make any further contact with the company after the lay-off. Some work became available prior to December 2007 and the Managing Director distributed this work to the employees who had been contacting him about work since the lay-off. In January 2008 the Managing Director was in a position to offer work to the appellant and he attempted to contact the appellant through his friend but was unsuccessful. Three of the six employees returned to work. The company dismissed one other employee. The appellant and a colleague failed to return to work or contact the respondent in relation to work. The Managing Director asked another employee to contact the appellant with an offer of further work but was informed that the appellant had returned to Poland. The respondent company continued to employ individuals up to the summer of 2008, depending on work requirements. The first redundancies in the company were in the latter part of 2008 through to 2009.

Appellant's Case:

Giving evidence the appellant stated that he was not given notice on 12th October 2007 of a possible lay-off. In or around that time there was a rumour that a lay-off situation might occur but the appellant was first informed of this by management on 26th October 2007. On this date the appellant was informed that there was no further work for him and he was "fired". He finished in his employment on 26th October 2007 and has not worked since. The appellant received a P45 dated 9th November 2007. During November 2007 the appellant's friend enquired on his behalf if the respondent had any work available. The Managing Director knew where the appellant lived if he had wanted to contact the appellant. The appellant had to vacate this house by the 28th November 2007. He signed off in the social welfare office and returned to Poland on 1st December 2007.

The appellant returned to Ireland on 23rd January 2008 for a period of time. He made various attempts to contact the company enquiring about available work and redundancy. He attempted to contact the Managing Director by telephone during this time but was unsuccessful. Another employee informed him that there was no work as the company had collapsed due to the recession. Almost every week the appellant contacted this employee about the possibility of work with the respondent. Whenever the appellant could afford to buy a flight ticket he came to Ireland for a week at a time. During that week he would contact his friend about the possibility of work with the respondent. The appellant was satisfied that he had received holidays accrued to the end of his employment.

Determination:

Whilst there was a conflict of evidence in relation to the 12th and 26th October 2007, the Tribunal accepts that the respondent followed the normal custom and practice of communicating with employees when the appellant was informed that he was placed on temporary lay-off on the 26th October 2007. There is no doubt but that the appellant did not submit notice in writing to the respondent of his intention to claim a redundancy payment as set out in S.12(1) "*An employee shall not be entitled to redundancy 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 claim under the Redundancy Payments Acts, 1967 to 2007, must fail.

The appellant remains on lay-off, therefore his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, must fail.

The appellant was satisfied that he had received all holidays accrued to the 26th October 2007. Accordingly, the claim under the Organisation of Working Time Act, 1997, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)