

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – appellant

CASE NO.
RP912/2009

against

EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D Cagney BL

Members: Mr D Winston
Mr J Dorney

heard this appeal at Dublin on 5th January 2010

Representation:

Appellant(s): In person

Respondent(s): Mr David Gaffney
Coakley Moloney Solicitors
49 South Mall, Cork

The decision of the Tribunal was as follows:

Respondent's Case:

The Managing Director (MD) of the company gave evidence that the appellant was dismissed for performance issues and that a redundancy situation did not exist. The MD is based in Cork, while the appellant worked in the company's Dublin warehouse. The MD was kept informed about the appellant's performance and was sent a copy of memos issued to him. On May 28th 2008, the General Manager, based in Dublin, issued a memo to the appellant with the subject line reading 'unacceptable employment issues'. The memo cited errors that the appellant had made and how this led to other employees having to check his work. The appellant's laziness in carrying out tasks and his poor time keeping were also cited. The appellant was advised that failure to improve his performance would lead to his dismissal.

On November 25th 2008, the Warehouse Manager sent a memo to the appellant concerning issues with the appellant's performance over the preceding two weeks. The Warehouse Manager cited errors and the amount of time it had taken the appellant to complete a task. He

informed the appellant that this was not acceptable.

In December 2008 the MD instructed the General Manager to dismiss the appellant in January 2009 and to give him two month's pay. The MD did not receive any written request for redundancy from the appellant. There were no redundancies in the company before or afterwards.

The General Manager gave evidence that he hired the appellant in 2006. While the appellant passed his six-month probationary period, a number of performance issues arose. Memos were sent to the appellant about the issues and he spoke to him on a number of occasions. He spoke to the MD about the appellant in December 2008 and advised him that he did not believe that the appellant's performance would improve. It was a small operation and the appellant was unreliable and causing work for others. The MD advised the General Manager to wait until January to dismiss the appellant and to give him two months pay to cushion him while he found other work.

The General Manager met the appellant on January 2nd 2009 and advised him that he was being dismissed. He disputed that he ever stated that the appellant was being made redundant.

During cross-examination the General Manager confirmed that the appellant had not been replaced. The reasons for this were that the first three months of the year were always quieter, and that the business was not as buoyant as it was previously. He also found that the two other employees were capable of covering the amount of work that the appellant had previously carried out.

The General Manager disputed that he told the appellant that he had to let him go 'with the way things were', but rather that he said that it wasn't working out between the appellant and the company. The General Manager asked the appellant to leave that day and promised to write him a reference.

Appellant's Case:

The appellant gave evidence that when he went to work on January 2nd 2009 the General Manager told him that he was sorry, but that he would have to let him go 'with the way things were'. He was told he would get two months pay, and that they company was not taking anyone else on. The appellant found that the job was quieter at the time. The tax office later told him that he would be entitled to a redundancy payment.

During cross-examination the appellant agreed that there had been no talk of redundancies in the company previously. He believed he had been let go because work had 'slacked off', but the issue of redundancy did not arise until later on. He did not ask about a redundancy payment on January 2nd 2009. He did not think he was entitled to a payment, as he did not know how much service was required. The only form he filled in to claim his redundancy was the application form to the Tribunal. It never entered his head that he was being dismissed for the performance issues cited in the memos. He contended that others had made similar mistakes. The appellant's partner contended that she had sent the company a redundancy claim form.

Determination:

The Tribunal finds that a dismissal clearly occurred, but there is no evidence to suggest that it was as a result of a redundancy situation. Evidence was given in regard to performance issues, which, in the respondent company's view, led to the termination of the appellant's employment contract. There was no evidence adduced to indicate that the dismissal occurred for other reasons.

Therefore, the appeal under the Redundancy Payments Acts, 1967 to 2007, must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)