

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

RP50/2009

appellant

Against

EMPLOYER

respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Ms M. Sweeney
Mr. T. Kennelly

heard this appeal at Limerick on 27th October 2009

Representation:

Appellant(s): Mr. Mike McNamara, Building & Allied Trades Union,
Mechanics Institute, Hartstonge Street, Limerick

Respondent(s): Mr. Michael Deasy BL instructed by Mr Keith Hogan, McMahon O'Brien Downes,
Solicitors, Mount Kennett House, Henry Street, Limerick

The decision of the Tribunal was as follows:-

At the outset of the hearing Counsel for the respondent raised a preliminary issue in relation to the lodgement of the TIA form by the appellant outside of the requisite time limit of one year. The appellant's representative outlined to the Tribunal that the appellant served form RP77 on the employer on 10 October 2008.

Under Section 24 (b) of the Redundancy Payments Act 1967 as follows:-

- 24 "Notwithstanding any other provision of this Act, an employee shall not be entitled to a lump sum unless before the end of the period of thirty weeks beginning on the date of dismissal or the date of termination of employment
- (b) the employee has made a claim for the payment by notice in writing given to the employer"

Counsel for the respondent conceded that the appellant had notified the respondent.

Appellant's Case

The appellant told the Tribunal that he had worked with the respondent for over two years and commenced on 28 February 2005. On the 25 May 2006 the director of the respondent asked him if he would work for another contractor for two weeks. He undertook work for this company for two weeks and when he finished on Friday of the second week the director informed him that there was two more weeks' work with this contractor, which he agreed to undertake. He had no break in employment and no lay off of any description. Everything was agreed between the respondent and the other contractor. After October 2007 he contacted the respondent on a number of occasions to establish if work was available.

In cross-examination he stated that he undertook work for the other contractor for five weeks from 26 May 2006 to 30 June 2006. He could have refused to do this but an arrangement was made between the respondent and this contractor that the appellant would undertake work for it.

In answer to questions from the Tribunal he stated that the rates of pay with the other contractor were prearranged by his contract. His P45 was given to the other contractor, as it was needed to sort out his tax. He then continued to work with the respondent for another year. The only reason that he left the respondent was to facilitate the other contractor and he had continuity of employment.

The appellant's colleague DG told the Tribunal that he did not look for work with another contractor. DG and the appellant were approached by the respondent to undertake work for another contractor. His employment was continuous after that.

Respondent's Case

TOC the director of the respondent told the Tribunal that he employed four blocklayers and the appellant and his colleague were the last two blocklayers that he employed. A LIFFO agreement was in place with the trade union. He needed to release the appellant and his colleague to another contractor on 26 May 2006 and they were given two weeks notice. He did not have an issue with this and the appellant's P45 was forwarded to this contractor. He then asked the appellant and his colleague if they were interested in returning to work with the respondent as he had work available.

In cross-examination he stated that he was not sure if the other contractor approached him in relation to the appellant and his colleague. The respondent subcontracted blocklayers.

In answer to questions from the Tribunal he stated that the appellant's P45 was sent to the other contractor a week after he started. He had never implemented a temporary lay off. The respondent endeavoured to retain its good employees. When he was asked if the appellant was of the view that the respondent did him a favour he replied that the other contractor contacted him.

Determination

The Tribunal finds that a genuine redundancy situation existed and the appellant is entitled to a lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following criteria: -

Date of birth	25 July 1953
Date employment began	28 February 2005
Date employment ended	18 October 2007
Gross weekly pay	€1,800

This award is being made subject to the appellant being in insurable employment under the Social Welfare Acts during the relevant period.

Please note that there is a ceiling of €600 on all awards made from the Social Insurance Fund.
Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

