

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE -*appellant*

RP1058/2009

against

EMPLOYER - *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. N. O'Carrol-Kelly B.L.

Members: Mr J. O'Neill  
Mr J. Dorney

heard this appeal at Dublin on 11<sup>th</sup> February 2010

#### Representation

Appellant: Mr. Charlie Prizeman, TEEU, 5 Cavendish Row, Dublin 1

Respondent: Sinead Mullins, IBEC, Confederation House, 84-86 Lower  
Baggott Street, Dublin 2

The decision of the Tribunal was as follows: -

#### Respondents Case

The Contracts Manager and owner (PK) of the respondent, an electrical contractor, was the appellant's manager. The appellant was on sick leave with a hand injury from the 27<sup>th</sup> of February 08 until the 3<sup>rd</sup> of March 2008. The appellant returned to work but due to the injury had to leave the site and go to hospital and was out on sick leave for a further four weeks. The respondent received notice from the appellant on the 14<sup>th</sup> of April 2008 that he would be out on sick leave until further notice. If the appellant was out on leave it was normal procedure to ring the respondent on his return and was assigned a site to work on.

The appellant came into the respondent's office in August 2008. The appellant informed the respondent that he could no longer work due to his hand injury and that he needed surgery. The respondent asked what the appellant was going to do in the future to which he replied "I've no choice I can't be an electrician anymore." There was plenty of work available for the appellant but he was

unable to do it.

The office Manager prepared all the appellant's paperwork, which he came to collect in February. The appellant never approached PK again or had any contact with him since the meeting in August.

#### *Cross Examination*

The respondent did not make anyone redundant until March 2009 and initially it was contract staff. The first permanent member of staff to be made redundant was in June. In the last six months 10 permanent staff have been made redundant and 5 contract staff.

The Office Manager was informed in September that the appellant had left the respondent's employment and was instructed to prepare the appellant's paperwork. On the 19<sup>th</sup> of February the appellant came into the office to collect it. The respondent was not present on that day. The appellant told the office manager,

*“ I'm looking for my P45, I've been knocked off the sick I need it to get the Dole but I'm still not right.”*

The office Manager prepared the P45 and gave it to the appellant with a cessation date of the 28<sup>th</sup> of August. If a member of staff wanted to return to work the office manager would direct them to PK, her duties were solely administrative.

#### **Appellant's Case**

The appellant commenced employment with the respondent as an electrician in November 2004. In August 2008 during the appellants extended sick he went into the respondents office to update him on his health. The appellant advised the respondent that he needed surgery and would be on a waiting list for a year to a year and a half. In the mean time the appellant attended physiotherapy and with rest his injury improved. As a result the appellants doctor designated him fit for work.

In February the appellant went to the respondents office to inform them he was now fit for work. The respondent informed him he had resigned and handed him his P45. The appellant had never resigned. PK informed the appellant that things were slow and they had no work for him that his P45 was waiting for him. The appellant was shocked when he saw the cessation date of 28<sup>th</sup> of August on the P45 as he had not resigned only told them he would not be available until he had recovered from his injury.

#### *Cross Examination*

The appellant has not undergone the surgery for his injury yet. The appellant's injury has recovered, as he is no longer working. The doctor was aware of his profession when he found the appellant was fit for work. The appellant could have completed other jobs on site that would not have aggravated his injury.

## **Determination**

The Tribunal is satisfied that a redundancy situation did not exist in this case; rather the appellant was unavailable to work due to his injury and was incapable of performing his normal duties. The appellant requested his P45 to satisfy Social Welfare obligations. It follows that the claim under the Redundancy Payments Acts, 1967 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)