

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE
- *appellant*

CASE NO.
RP775/2009
MN728/2009

Against

EMPLOYER
- *respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr J. Hennessy
Ms S. Kelly

heard this appeal at Clonmel on 8th March 2010

Representation:

Appellant: In Person

Respondent: In Person

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant commenced employment with the respondent in July 2005. The respondent is a labour supply company. During direct evidence the appellant told the Tribunal that in July 2005 he was placed in Fermoy to carry out work as a labourer on the construction of a new motorway. The job in Fermoy was completed on a Friday and the foreman on the job asked him to go to Cullahill the following Monday. This was cleared with the respondent.

The appellant told the Tribunal that he received a phonecall from DH, consultant with the

respondent company telling him that he was to finish work with the company on Wednesday 17th July 2008. The following week he received his P45 in the post. On receipt of the P45 the appellant contacted DH and asked him was there no more work. The appellant phoned DH on three or four occasions enquiring about further work with the respondent and DH said there was nothing available and that he wasn't the only one being made redundant, they were letting most people go.

The appellant had no further contact with the respondent until he sent a form requesting redundancy.

Under cross examination, the appellant told the Tribunal that he commenced employment with another employer on 29th July 2008. The appellant told the Tribunal that he did not look for work elsewhere straight away because he thought there might be more work assigned to him from the respondent. The appellant did not look for new employment until he received his P45 in the post.

Respondent's Case

The Tribunal heard evidence from the operations manager, GD. The company are mostly involved in supplying labour to the construction industry. GD told the Tribunal that in July 2008 the company were still very busy with approximately 1500 personnel. They also employed 12 consultants, one of whom was DH. The company try their best to avoid making people redundant and employees are always told to contact the office when a job they are assigned to is completed.

GD disagreed with the appellant's version of events, whereby the appellant said that he telephoned DH on a number of occasions and DH had told him that the company were letting a number of employees go. GD told the Tribunal that it is his opinion that the appellant found himself a job elsewhere and he decided himself that he was not going to continue working for the respondent. GD feels that this is why the appellant did not contact the office to enquire about being placed on another assignment.

Determination:

In considering all of the evidence, and in light of the fact that the Tribunal did not have the benefit of DH's evidence in relation to whether there was work for the appellant or not, the Tribunal must find in favour of the appellant's evidence that he had been told on a number of occasions that there was no more work available for him and furthermore, that the company was letting most people go. Therefore, the appellant is entitled to a redundancy payment based on the following information

Date of Birth	25 th June 1978
Date of Commencement	22 nd July 2005
Date of Termination	17 th July 2008
Rate of Pay	€703.56

The above award is made subject to the appellant being in employment which is insurable for all purposes under the Social Welfare Consolidation Act 2005.

The Tribunal awards the appellant €1407.12 compensation (being the equivalent of 2 weeks pay) under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

A ceiling of €600 per week applies to any payments from the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

