

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee *-appellant*

RP1617/2009
MN1421/2009
WT613/2009

Against

Employer *-respondent*

under

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: Ms. E. Daly B.L.
Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Letterkenny on 18th February 2010 and 13th April 2010

Representation:

Appellant: In Person

Respondent: Mr Frank Dorrian, P.A. Dorrian & Co, Solicitors, High Road, Letterkenny,
Co. Donegal

The decision of the Tribunal was as follows: -

Claimant's Case

The claimant worked as a Security Guard with the respondent from August 2006 to the 26th of February 2009. On the 26th of January the claimant was due to start work on a site when he received a call to say another member of staff needs the work van. The respondent told the claimant to give the van to the other staff member, as the claimant was not working. The claimant went into the office on Friday to collect his wages but there was no wages there for him and he discovered he was not rostered to work the following week. The respondent informed the claimant that there was no work available for him but that his employment was not being terminated. The claimant returned his keys and said he would be back to collect his wages. There was no explanation as to why there was no work available to the claimant other than that he had left a door open on one of the premises he was working on. On the 27th of February the respondent instructed the appellant to ring the office in two weeks to see if there was any work available. The appellant received a letter in March

2009 requested by him for Social Welfare, informing him there was no work available 'due to the economic downturn.' The appellant served the respondent with the RP9 form dated the 22nd May but never received a reply.

Cross Examination

The appellant made an error in signing a time sheet October 2009 (10/2009) instead of January 2009 (01/2009). On the 13th of February the appellant received money due of €744.36. On the 3rd of March the appellant received €671.72 and on the 14th of March he received €400.00 being alarm call out fees and not the holiday pay the respondent is claiming. The letter the respondent sent on the 3rd of March was sent to the wrong address.

The contracts the respondent had with various companies were put in jeopardy due to the appellant's actions;

- Site 1 - appellant no longer permitted on the premises
- Site 2 - premises broken into while appellant on duty
- Site 3 - Door left open by appellant on site

The respondent never put any of these allegations to the appellant. The appellant disputes these allegations. The appellant requested his P45 as there was no work available for him with the respondent. The appellant was never informed that he was being 'sacked' or dismissed. The registered post receipt for the RP9 form was submitted to the Tribunal.

Respondent's case

The respondent outlined the reasons for dismissing the appellant as follows.

- The appellant was not permitted by one of the clients of the respondent to work on their premises.
- Another client had been broken into while the appellant was on duty.
- A door into the premises of another client had been left unlocked all night. It was the duty of the appellant to ensure that all doors were locked.

As a result of the above the respondent had lost some of these contracts. Consequently the respondent dismissed the appellant on 26th Feb. 2009 by telling him to leave that he was sacked. The respondent denied that he had told the appellant he was temporarily laid off and to ring the office in two weeks time to see if there was any work available. Having received the RP9 form from the appellant the respondent returned it with a letter stating that the appellant had been dismissed and not made redundant. A copy of this letter was handed to the Tribunal but the appellant denied having ever received this letter.

The respondent stated that there was not a redundancy situation at the time of the dismissal of the appellant and that the position left vacant was subsequently filled by the recruitment of another person.

Determination

The Tribunal finds the evidence of the appellant to be more credible than that of the respondent in respect of the circumstances surrounding his dismissal. Nevertheless the Tribunal are satisfied that the appellant was dismissed rather than made redundant. Furthermore the Tribunal finds that a genuine redundancy situation did not exist at the time of termination of the appellant's employment and the position was subsequently filled. Therefore the appeal under the Redundancy Payments Acts, 1967 To 2007 must fail.

On the basis that the respondent accepts that a summary dismissal occurred and no notice was given the Tribunal awards the appellant €700.00, being two weeks wages, under the Minimum Notice And Terms Of Employment Acts, 1973 To 2005.

Having considered the evidence presented to it the Tribunal are satisfied that the appellant was not paid for holidays due and awards €232.40 under the Organisation Of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)