

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

-appellant

CASE NO:
RP1485/2009
MN1293/2009
WT580/2009

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: Mr. D. Herlihy

Members: Ms M. Sweeney
Mr. J. Flavin

heard this appeal on 3rd June 2010 at Tralee

Representation:

Appellant: Mr. Michael Stack, Gerard Baily & Co. Solicitors, Church Place,
Church Street, Tralee, Co. Kerry

Respondent: Mr. Liam Ryan, Sheehan Ryan & Co. Solicitors, 61-62 New Street,
Killarney, Co. Kerry

Appellant's Case

The appellant commenced employment on the 7th of March 2005 as a general operative and truck driver. The respondent informed the appellant there was no more work available for him in January 2009. The appellant was off work for a week but on the following Tuesday recommenced working for the respondent. On Tuesday evening the respondent again informed the appellant there was no further work available for him. The appellant did not work the following week then received a phone call requesting he return the truck he drove to the respondent. The appellant was issued with a letter dated the 19th of January 2009 stating that;

“Due to the decline in work available (with the respondent), I am unable to offer (the appellant) full time employment for the foreseeable future. Hopefully in the next few weeks I will be in a position to offer him full time employment.”

The appellant contacted the respondent 6 weeks after receipt of the letter asking the respondent to sign the redundancy RP9 form. The respondent refused, stating that he 'never signed them as he was a private company.' The appellant again contacted the respondent 2 weeks later but was instructed by the respondent 'not to contact him again.'

In February 2007 work was quiet with the respondent, specifically with the truck the appellant was driving. The respondent informed the appellant he 'was not able' to drive the bigger truck the respondent had available and had to let him go. The respondent instructed the appellant to 'get something else' and he would contact him if things picked up. The appellant got a week's trial working with a waste disposal company and continued to work the following Monday, Tuesday and Wednesday with the waste disposal company. On Saturday evening the respondent came over to the appellant and informed him that there was now work available and asked him to return to the respondent. The appellant returned to work for the respondent on the 12th of March 2007. The respondent had employed a new driver 2 weeks before he let the appellant go, the new driver left the respondent's employment after a few weeks. The appellant never received a contract of employment, terms and conditions of employment or payslips from the respondent.

Cross Examination

The appellant never received his P45. There was not plenty of work available in February 2007 and the appellant did not ask for his job back in 2007; the respondent requested that he return to work. The appellant returned, as it was the type of work he liked. The appellant's terms and conditions did not change when he returned to work.

Appellant's Re-Examination

The appellant received his P45 2 weeks after his termination in January 2009 from the respondent's house; he had no contact with the respondent's bookkeeper.

Respondent's Case

The respondent employed the appellant in March 2005. In February 2007 the appellant gave the respondent 2 weeks notice that he was leaving his employment and starting work with the waste disposal company. The respondent 'begged' him to stay, as work was very busy at the time. The appellant requested his P45, which was issued to him by the respondent's bookkeeper by post. The appellant returned to work with the respondent as he was having trouble communicating with his new colleagues.

Cross Examination

The appellant's P45 was ready and dated the 26th of February as the appellant had given the respondent 2 weeks notice that he was leaving. The appellant requested his job back as he was not happy with his new job in the waste disposal company. The respondent was in Australia when the appellant recommenced employment but had asked for his job back before the respondent had left. The respondent does not understand why the appellant left in March to drive a refuse truck, as he was happy with his job with the respondent.

The respondent issues any staff on lay-off with letters stating they are on lay-off for Social Welfare purposes. The appellant was not issued with one of these letters in February 2007 but was issued one in January 2009. The respondent did not put any staff on lay off in 2007.

Determination

The Tribunal prefers the evidence of the respondent and finds that the appellant, by giving the respondent 2 weeks notice terminated his own employment in February 2007. The appellant therefore does not have the Continuous Employment required to entitle him to a Redundancy Lump Sum as per schedule 3 section 4 of the Redundancy Payments Act 1967, which states,

‘For the purposes of this Schedule employment shall be taken to be continuous unless terminated by dismissal or by the employee’s voluntary leaving the employment.’

The appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

The respondent conceded that in January 2009 the appellant did not receive his statutory minimum notice entitlement. The Tribunal allows the appeal under the Minimum Notice Terms of Employment Acts, 1973 to 2005 and awards the appellant €600.00 being the equivalent to one weeks pay.

The appellant did not offer any evidence for the appeal under the Organisation of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)