

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

appellant

MN1774/2009

RP2108/2009

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: Mrs. M. Quinlan

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

heard this appeal at Dublin on 10th June 2010

Representation:

Appellant(s): The appellant in person

Respondent(s): Managing Director of respondent

The decision of the Tribunal was as follows:-

Respondent's Case

KG told the Tribunal that the respondent undertook work in general building. The appellant who was employed with the respondent since 23 May 2006 went to FAS on block release to complete Phase 4 of his apprenticeship. His colleague GM received a telephone call from the appellant on Thursday 11 June 2009 as to where he would report to on Monday 15 June 2009 after completing Phase 4. The appellant's father telephoned him on Tuesday 16 June 2009 and told him that the appellant had done enough cleaning and labouring work and he requested the appellant's P45. He did not have a conversation with the appellant regarding redundancy. The only work the respondent had at this time was cleaning houses, which had recently been completed.

In cross examination when asked if the respondent told the appellant that it had no work available for him he replied that that there was cleaning work available and the appellant was offered work.

In answer to questions from the Tribunal KG stated that the appellant was employed as an

apprentice carpenter and labourers cleaned houses. A tradesperson did not clean houses. The appellant was not replaced after he left. The respondent did not have carpentry work for the appellant at this time but had cleaning work available.

GM told the Tribunal that he was a director of the respondent company. The appellant telephoned him on Thursday 11 June 2009 and asked him if he had work available for him on Friday 12 June 2009. He told him that he had no place for him on Friday. On Monday 15 June 2009 the appellant telephoned KG. The appellant's father requested his P45 and that was the end of the matter. A few weeks later the appellant sought redundancy. The respondent felt that the appellant was not entitled to redundancy, as he was not let go.

In cross-examination when asked if the appellant had not received an employment contract and that he did not receive a letter that his employment was terminated he replied that the appellant was sent his P45 when requested.

In answer to questions from the Tribunal when he was asked when did he expect the appellant to contact him he replied that a week prior to the appellant completing his phase with FAS he knew he would be back to work with the respondent. There was no carpentry work available for the appellant at this time. The respondent did not make any member of staff redundant and two staff left of their own volition.

The appellant had completed stage four of his apprenticeship. He passed two stages of his apprenticeship and has to repeat two. The appellant could continue his apprenticeship with another employer. He did not discuss with the appellant the status of his apprenticeship and if he had another employer to go to. After the appellant requested his P45 he did not have further contact with him.

Appellant's Case

The appellant told the Tribunal that he telephoned the respondent on Thursday 11 June 2009 and enquired if there was work available. He was informed that there was no work for him. On the following Monday 15 June 2009 his father requested his P45. The appellant did not contact the respondent again and his father dealt with the matter after that. He was not sure if apprentices were employed with the respondent at this time.

In answer to questions from the Tribunal he stated that when he telephoned the respondent on Thursday 11 June 2009 GK told him that there was no work available for him on Friday 12 June. He did not recall being told to contact GK before Monday. When his father telephoned the respondent on Monday 15 June he was informed that there was cleaning work to be done. He was not offered work at his chosen trade. He was offered cleaning work. After his employment finished in June 2009 he undertook some work for his father between June and October 2009. He commenced alternative employment in October 2009.

Determination

The Tribunal by majority with Mr. Jordan dissenting dismisses the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The following is the dissenting opinion of Mr. J. Jordan

Mr Jordan is of the view that the employer had failed to provide work at the appellant's trade or suitable alternative employment and therefore in his view the appellant is entitled to a redundancy payment under the Redundancy Payments Acts, 1967 to 2007 and he is also entitled to his minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Majority Decision

By majority opinion having heard all the evidence the Tribunal is satisfied that the redundancy situation as such did not exist in the respondent company. In the circumstances it is the view of the Tribunal that the respondent had endeavoured and were continuing to endeavour to hold on to their existing staff and had succeeded in doing so up to the time when the appellant had returned from ten weeks block release with FAS and were continuing to do so up to the date of the hearing. In the circumstances by majority decision the Tribunal is satisfied accordingly that a redundancy situation did not exist and the appeal under the Redundancy Payments Acts, 1967 to 2007 fails. The claimant is not entitled to compensation under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

