

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP2222/2009

- appellant

against

EMPLOYER

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. A. Moore

heard this appeal at Letterkenny on 21st April 2010
and 5th July 2010

Representation:

Appellant: In person

Respondent: In person

The decision of the Tribunal was as follows:-

On the **first** day of the hearing the appellant gave his direct evidence, but kept referring to JG, during cross examination JG was also brought up. The chair explained that JG would have to be in attendance to give evidence so adjourned it till the 5th July. The chair also adjourned for the appellant to get advice, as the appellant could not read the notes provided by the respondent on the first day.

Preliminary Issue:

A preliminary issue was raised on the **second** day of the hearing as to whether the appeal under the Redundancy Payments Acts, 1967 to 2007 was lodged within the required 12-month time limit.

Respondent's Case:

The owner of the company gave evidence. The appellant was first employed in 1994 until 2001 when was absent for a period of 55 weeks. He returned to work until September 2007 when he again left his employment for a period of 2-3 weeks. The witness stated that he was aware the appellant was working for another employer during this time.

Some weeks later he approached the owner's brother (hereafter known as JG) and asked about getting his job back who informed him that he must speak to the witness. He spoke to the witness and was informed him that he could not just walk out of his employment but offered him a job and he returned to work on September 21st 2007.

From November 3rd 2007 to February 11th 2008 he was absent on sick leave. In July 2008 he took 2 weeks annual leave and was due to return to work on August 11th 2008. JG spoke to the appellant who requested a week and later a further 2 weeks off to finish up some personal work. The appellant later called to the office and requested a letter from the secretary in order for him to obtain social welfare.

There was no further contact from the appellant until a letter was received from him dated August 5th 2009. As the premises were closed for holidays the letter was not opened until August 18th 2009. The letter stated the appellant had spoken previously to the owner's nephews to see if there was any work for him. He also said that he had tried to contact JG but could not get a reply. He asked if they could confirm in writing whether or not "*is there any possibility of me recommencing employment*" with the respondent company. An RP50 form was also received from the appellant.

He wrote to the claimant and offered him a 3-day working week. The appellant replied that although he had not worked for the respondent for 12 months he did not want to resume work as a new employee and wanted it confirmed that he would hold his previous service. He replied on August 26th 2009 and had no further contact with him.

On cross-examination he explained that it was common practice to contact employees when they were returning to work to inform them what location they would be working in. He refuted he had been informed there was no work for a couple of weeks.

The owner's brother (JG) gave evidence. He had been the appellant's foreman but did not have the authority to hire or fire any employees. He stated the appellant had asked him for an extra week off for personal reasons and the following week he had requested a further 2 weeks. He also came to the office and requested a letter from the secretary to sign on for social welfare benefit.

The secretary gave evidence. On August 19th 2008 she arrived to work to find the appellant there. He requested a letter from her for the Department of Social Protection. She gave him the letter but assumed he would return to work a few weeks later. She issued the appellant with his P45 and had put the date of cessation as August 8th 2008 as this was the last day he was paid. When asked she said that she had not seen this as a break in service.

Appellant's Case:

The appellant gave evidence. He agreed he had a break in service prior to 2008. In July 2008 he commenced 2 weeks annual leave. On August 10th 2008 JG contacted him and informed him there

was no work for him the following week. He said he would ring JG the following week.

He contacted JG the following Sunday (18th) and was told there was no work, to go to the office the following day and the secretary would sort out a letter for him for the Department of Social Protection in order for him to sign on for benefit. The following day he went to the office and was given the letter. Over time he tried to contact JG to see if there was any work for him. At one point he drove up to one of the respondent's sites and parked his tractor beside JG's van. He went in search of JG but could not locate him. On his return to his tractor JG's van was gone.

When asked he said that he had gone to JG's house and spoke to his son and 2 nephews if there was any work but they said they knew nothing about it. When asked he said that he had not contacted the owner about work as he always dealt with JG. When asked he said that he had received assistance with the wording of his August 5th 2009 letter. He stated that he had not worked for any other employer for payment but had helped people out.

Preliminary Determination:

Having heard the evidence and submissions adduced from both parties in the case over a two-day period the Tribunal finds that the appellant's employment terminated on August 8th 2008. The T1A form was lodged to the Employment Appeals Tribunal on September 3rd 2009, this being 5 days short of 13 months after his termination.

The appeal was not referred to the Tribunal within the 52 week period as set out in the above Acts and the Tribunal have discretion to extend the time to 104 weeks if there is reasonable cause. The Tribunal determines that the failure to refer the appeal was not due to reasonable cause. Therefore the appeal was not on time and the appeal under the Redundancy Payments Acts, 1967 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)