

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP2371/2009

- appellant

against
EMPLOYER

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Ms J. Winters
Mr O. Nulty

heard this appeal at Monaghan on 22nd July 2010

Representation:

Appellant(s) : Ms. Lauren Tennyson BL instructed by:
Martin P Crilly & Co., Solicitors, 7 Main Street, Carrickmacross, Co. Monaghan

Respondent(s) : Wilkie & Flanagan, Solicitors, Main Street, Castleblayney, Co. Monaghan

The decision of the Tribunal was as follows:-

Respondent's Case:

The owner of the respondent company gave evidence. The appellant was employed by the respondent as a carpenter. Due to a downturn in business he was put on lay off on February 20th 2009. He was given a letter dated March 4th 2009 to bring to the Department of Social Protection to claim benefit. On March 8th the respondent received a call from a friend (hereafter known as S) looking for a couple of carpenters to do some work. He contacted the appellant to offer him some work. The following day he and the appellant drove to Dublin in the company van, however it broke down in Ardee. The respondent rang S to explain what happened and to see if there was room in his van to bring the appellant to the site which he did. The respondent put his tools in S's van for the appellant to use. The van was not fixed until Wednesday. He kept in contact with the appellant to see how the job was going in Dublin.

On Friday the appellant turned up to pick up his tools. The respondent told him he would pay him the following week. The appellant told him that he was going to remain working for the Dublin contractor (hereafter known as JL) himself. He contacted JL who was fine for the appellant to remain working for him directly. He informed the appellant. On April 10th 2009 he received an RP9 form from the appellant claiming redundancy as he had not received any work. The respondent stated that at no stage was he going to make the appellant redundant. The appellant left of his accord to work for JL. The respondent was never paid for the work carried out by the

appellant for JL in Dublin. The respondent stated that he had not paid the appellant for the work carried out in Dublin as he felt JL would pay him. A copy of a letter, submitted to the Tribunal, from the Revenue Commissioners dated February 15th stated that JL had were issued with the a payment card for the respondent company on March 25th 2009.

S gave evidence. He confirmed the evidence adduced by the respondent. This was also confirmed by a staff member had been in the van on the day the appellant got a left to Dublin when the respondent's van broke down.

Claimant's Case:

The claimant gave evidence. On February 19th 2009 he received a call from the respondent telling him work had dried up and he would be laid off the following day. On March 4th he requested and received a letter to take to the Department of Social Protection. On March 8th he received a call from the respondent telling him there was work if he wanted it in Dublin. He agreed and turned up the following day to get a left to Dublin. The van broke down and he got a lift with S. He got to the site, met with the Health & Safety Officer and was issued with safety gear. On March 9th the respondent rang him to see how was he getting on. They met that Friday. The respondent offered him a cheque but he replied that JL was paying him directly as a sub-contractor.

He reported directly to JL. The respondent never worked on the site. He hoped work would come up for the respondent and he continued to work for JL in Dublin on a temporary basis. He even acquired a letter from JL to that effect. In April he submitted an RP9 form to the respondent but received a solicitor's reply stating he was not entitled to a redundancy payment.

On cross-examination he did not refute he had told the respondent he was going to work directly for JL. When put to him if JL was his uncle, he confirmed it.

JL gave evidence. He stated that he assumed the appellant was working directly to him on site and not for the respondent. He never thought the respondent company was involved on site. When put to him about the delay in the appellant being paid by him he said this was not unusual in the trade.

Determination:

The Tribunal have carefully considered the evidence adduced by both parties in this case. It is clear that JL applied for a payment card from Revenue in the name of the respondent and when the appellant commenced work on March 9th 2009 on the Dublin site it was as an employee of the respondent. On March 13th 2009 the appellant terminated his own employment when informing the respondent that he was taking up work directly for JL.

Accordingly, the Tribunal finds that no redundancy situation occurred and therefore the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)