

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – appellant

CASE NO.
RP2354/2009
MN2033/2009

against

EMPLOYER – respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr A Courell BL

Members: Mr D Morrison
Mr T Gill

heard this appeal at Sligo on 14th May 2010

Representation:

Appellant(s): Mr Blazej Nowak
Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

Respondent(s): Mr Micheál Canavan
McGuinness & Canavan Solicitors
42 Great James Street, Derry, County Derry, BT48 7D

The decision of the Tribunal was as follows:

As the dismissal was in dispute the appellant gave evidence first.

Appellant's Case

The appellant gave evidence that he commenced his employment as a painter with the respondent company in October 2004. He initially worked in Dundalk, then Dublin and then to Sligo where he moved to in November 2005. He worked in the surrounding areas including Enniskillen and Ballina over the next few years.

In mid June 2009 he was working in Enniskillen. On Friday 16th January 2009 the foreman told

him there was no more work. He finished working with the company on January 20th 2009 and was not offered anything else. He phoned the company's office and spoke to one of the office staff about getting a redundancy payment, but she said no.

During cross-examination the appellant denied that he worked in Carrick-on-Shannon for his last working week in January 2009. He agreed that he signed the time sheet. The appellant disputed the contention that he was offered work in Dublin with free transport and accommodation. He had sometimes worked in Dublin when the Sligo area was quiet. He was aware of the project in Dublin but he did not know that three of his colleagues with went to work in Dublin. He did not know if they were told that there was no more work. He disputed the contention that the managers had tried to contact him several times when he did not show up for work in Dublin the following week. Working in Dublin would have been inconvenient with a young family in Sligo, but he would have done it if he had been offered.

He spoke to the receptionist about getting a redundancy payment. He did not ask to speak to any of the managers.

The appellant agreed that he was contacted at a later date by one of the managers who offered him a job in Mayo. He contended that he had accepted the job, but that the manager never phoned him back. He denied that he told the manager that he was doing as well on social welfare payments.

He contended that the respondent had agreed to his absence from July to September 2005 and contended that this was not a break in his service.

Respondent's Case:

The contracts manager for the North gave evidence that the appellant was a good worker and he was keen to keep him as a member of staff. He contended that they were definitely working in Carrick-on-Shannon in January 2009. Work was coming to end but the company needed employees to work on a large project in Dublin. He offered the appellant work in Dublin the following Monday, he didn't say yes or no. He received phone calls the following Monday from the site manager in Dublin who said that the appellant had not appeared. He tried to contact the appellant a few times but got no reply.

The contracts manager phoned the appellant in September 2009 and offered him work in Mayo as he thought it would suit him. The appellant refused and said he was happy on state benefits.

The contracts manager for the East gave evidence that the company was under pressure to complete a job in Dublin and asked for spare employees to be brought in. The appellant's three colleague arrived but he did not. He phoned the appellant a few times and left messages but got no reply. He did not see the appellant again.

A director of the company gave evidence that the appellant was a good employee. He contended that there had been a break in the appellant's service from July to September 2005 when he went home to Poland to get married. The appellant indicated that he did not intend to return, but he returned in September 2005 and sought work with the company again.

When the appellant did not appear for work in Dublin in January 2009 the director phoned him three times but he did not get an answer. The appellant's contract of employment specified that the

location of the employment could vary. The company provided accommodation if the work was away from home. The appellant did not contact him to seek a redundancy payment. The receptionist in the office never communicated to him that the appellant had asked her about a redundancy payment. There were no lay-offs in the company in 2009. There was work for the appellant.

Determination:

The appellant's contract provided for moving with his employment. He did not make the case that moving was unreasonable; he said that he was not offered work, but the Tribunal has to believe that he was. The respondent company's evidence was all given very honestly. The Tribunal dismisses the appeal for redundancy under the Redundancy Payments Acts, 1967 to 2007, in circumstances where there was no dismissal. Accordingly the Tribunal also dismisses the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)