

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE - *appellant*

CASE NO.
RP2681/2009

against

EMPLOYER - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr D. Hegarty
Mr O. Wills

heard this appeal at Cork on 30th July 2010.

Representation:

Appellant: In person

Respondent: In person

The decision of the Tribunal was as follows:-

Respondent's Case

The respondent gave direct sworn evidence. They had a contract with company A to supply labour. When they first obtained this contract in September 2006 they contracted the labour requirements for company A to company B. Company B was an employment agency that provided them with labour on demand. Company B supplied them with the services of the appellant. The appellant was a direct employee of Company B and was instructed by this company to attend work. The appellant was instructed by the respondent but in the main was instructed by company A.

In February 2008 the contract was renewed between the respondent and company A. The respondent informed company B that they would no longer require their services, as the rates were too high. At this time they offered the appellant the fulltime position with them. Company B issued the appellant with his P45 and he commenced work with the respondent. The appellant was made redundant on the 9th March 2009. From February 2008 to March 2009 there were a few changes in work practices and the location of the appellant work changed. At the time the appellant was made redundant he did not have the requisite 104 weeks required to be entitled to a redundancy payment. Also following on from advice they received they did not pay the appellant redundancy. The witness explained, as part of the appellant's redundancy would be paid from the statutory fund

he could not pay the appellant redundancy if he was not entitled to it. The respondent produced a copy of the appellant's P45 from company B and the last payslip from their business. At the time of the appellant's redundancy the respondent had just bought company A as it was insolvent and in dire financial straits, so redundancies had to be made.

Appellant's case

The appellant gave direct sworn evidence that he had commenced employment with company B and was paid directly by them in September 2006. He was employed as a supervisor and reported directly to an employee of company A. Company B was taken out of the equation in February 2008 and he became an employee of the respondent. He sought a new contract of employment and maintained he never received one. At this time in February 2008 there were no changes to his conditions of employment, his pay remained the same and he still reported to the same manager in company A. The only thing that changed was the respondent was now paying him. His role changed in August 2008 and he commenced working from a different office on the 19th August 2008.

Around February 2008 the operations manager of company B informed the appellant that they were no longer involved with company A and that the appellant would no longer be working for them, he did not recall receiving a P45 from company B. The previous CEO of the respondent had also informed him and the other employees from company B that nothing would change for them.

Determination

The Tribunal considered all of the evidence adduced at the hearing. Based on the facts heard during the course of the hearing the Tribunal are deeming that a transfer of undertaking in respect of the appellant's employment took place in February 2008, so therefore his commencement date is the 4th September 2006. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 succeeds and the Tribunal awards the appellant his redundancy lump sum, which is to be calculated on the basis of the following criteria:

Date of Birth:	27 th July 1979
Date of Commencement:	4 th September 2006
Date of Termination:	9 th March 2009
Gross Pay:	€585.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)