

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
RP2037/2009
MN1725/2009

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: Ms E Kearney BL

Members: Mr W O'Carroll
Mr T Gill

heard this appeal at Loughrea on 29th June 2010

Representation:

Appellant(s): Mr Aidan Lyons, UCATT
56 Parnell Square West, Dublin 1

Respondent(s): Mr Brian D'Arcy
Doherty Solicitors, Seville House, New Dock Street, Galway

The decision of the Tribunal was as follows:

As dismissal was in dispute the appellant went into evidence first.

Appellant's Case:

The appellant commenced his employment with the respondent, a building contractor, in 1987. The employment was uneventful. The appellant's wife became ill in late 2005 and was diagnosed with cancer. Before she was due out of hospital on December 7th 2005 the appellant asked the managing director (MD) for leave of absence in order to take care of her. MD told the appellant to take as much time as he needed.

The appellant's wife died in April 2008. The appellant did not feel able to return to work until January 2009. He contacted his employer in January 2009, but the MD told him there was no work. He contacted the MD again in March 2009 and asked about work or a redundancy payment.

The MD said he did not know anything about that. The appellant contacted his trade union. The appellant believed that he was still employed by the respondent company.

During cross-examination the appellant stated that he gave his employer a week's notice prior to leaving in 2005. He agreed that he went to the office on occasion, mainly in 2006, to have his carer's benefit form signed. He claimed carer's benefit, then carer's allowance and then a widower's pension after his wife died. He agreed that on one occasion the MD gave him a cheque for €1,000 as a goodwill gesture. He agreed that he had some income from a farm but denied that he told the MD that he had bought more farmland and intended to farm full-time.

Respondent's Case:

The MD of the respondent company gave evidence that the appellant came to him in December 2005 and said that he had to leave to take care of his wife. There was no discussion about him returning or that his job would be held open for him. The appellant left immediately. He came to the office occasionally in 2006 and told him how his wife was.

The MD did not issue the appellant's P45 immediately as he did not want to upset him. It was an oversight that it had not been issued subsequently. He paid the appellant up to the first week of 2006 as recorded on the company P35L report which was reported to the Revenue Commissioners.

When the appellant came to the office in January or February 2009 and asked for a redundancy payment, he did not ask to return to work. The MD said he would look into it. He contacted several bodies and was told that the appellant had no entitlement, which he communicated to the appellant. He contended that the appellant had come to the office, at some time, and requested a letter stating that he had left in December 2005. He did not have a copy of the letter.

Determination:

The Tribunal is satisfied that the appellant left his employment voluntarily in or about December 2005 and therefore a redundancy situation does not arise. Accordingly, the Tribunal dismisses the appeals under the Redundancy Payments Acts, 1967 to 2007, and the Minimum Notice and Terms of Employment Act, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)