

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
RP2006/2009
MN1155/2010

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: Ms O Madden BL

Members: Mr N Ormond
Ms N Greene

heard this appeal at Dublin on 28th July 2010

Representation:

Appellant(s): Elizabeth Gallagher
Paul O'Malley & Co, Solicitors
Market Square, Castlebar, Co Mayo

Respondent(s): In person

The decision of the Tribunal was as follows:

Respondent's Case:

The managing director (MD) of the respondent company gave evidence that the appellant commenced his employment with him on August 18th 2004. Due to uncertain orders and lack of work the appellant was laid off on December 12th 2008. He returned to work on January 5th 2009. The appellant continued to work until March 27th 2009 when the MD had to lay him off again, along with two other employees. He told them that he would bring them back when he had more work.

He asked the appellant to work a number of days in May 2009 (10th, 12th, 14th, 18th & 22nd). After a time the MD tried to contact the appellant to ask him to return fulltime, but he could not contact him. He did not know when that was. He heard that the appellant had gotten work elsewhere. The

appellant did not apply to him for a redundancy payment and there was no application on his file.

During cross-examination the witness stated that he had not issued an RP9 form to the appellant when he was put on lay-off. He had no knowledge of the appellant and another employee approaching a manager for a redundancy payment and being told that they were not entitled to it. The last clock card for the appellant was dated week ending March 20th 2009.

Appellant's Case:

The appellant gave evidence that after being put on lay-off for the second time he went to the office with a colleague at the end of April 2009. The MD was not in. They gave their redundancy claim forms to the manager who said he would give the forms to the MD. A couple of weeks later his colleague told him that they weren't going to be paid a redundancy payment.

During cross-examination the appellant agreed that he had worked six days in May and was invited back shortly after that, but he was working elsewhere. He agreed to work the days while he was looking for other work. He didn't remember if he asked the MD about a redundancy payment when he was working in May. He had not kept a copy of the forms. He stated that he went to the office two or three weeks after being laid off to hand in the redundancy claim forms.

Determination:

The Tribunal heard evidence that the appellant contended that he made the application for redundancy two to three weeks after being put on lay-off on March 20th 2009. Therefore, he is not entitled to a redundancy payment. It follows therefore that he is not entitled to an award under the Minimum Notice and Terms of Employment Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)