

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
RP2558/2009

against

EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. D. Donovan BL

Members: Mr. J. Hennessy
Ms. S. Kelly

heard this appeal in Waterford on 21 July 2010

Representation:

Appellant(s):
No legal or trade union representation

Respondent(s):
No legal representation

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant sought a redundancy award on the grounds that he was entitled to a redundancy lump sum payment from the respondent (a car sales business) based on his service with the respondent from 3 January 2006 to 20 February 2009.

The appellant worked thirty-nine hours per week cleaning for the respondent. The respondent told the appellant that the appellant's hours would have to be cut or the appellant would have to be made redundant. The appellant opted for redundancy but, after two weeks, changed his mind and started working for the respondent for twenty hours per week.

The respondent had a medical scheme for its employees. They used to be able to see a particular doctor free but this scheme changed to a system whereby the respondent would pay half of the doctor's fee and the employee would pay the other half. The appellant had a medical condition for which he had to see a doctor every three to four weeks. Therefore, during the weeks when the appellant went to the doctor, he came out with less than a social welfare payment. Consequently, after three weeks of short time, he decided that he would prefer to take redundancy. However, at this stage, the respondent refused to give it to him.

Respondent's Case

The appellant was an employee of the respondent from 3 January 2006 to 27 March 2009. There was a serious decline in the motor industry in 2009. The car market was down 67% on 2008 and the respondent's business was down a similar percentage. The respondent made a pre-tax loss of nearly €1.6m to 31 March 2009 and looked likely to record a pre-tax loss to 31 March 2010.

In order to survive the respondent needed to look at all costs and one area it looked at was the appellant's cleaning job.

On 3 February 2009 RM (a director of the respondent) and MMG (the respondent's financial controller) spoke to the appellant to explain the respondent's situation and that it needed to look at all costs. The appellant was working thirty-nine hours per week but the respondent felt that the basic cleaning could be done in twenty hours without a major drop in standards. It would get all its other staff to be more vigilant about cleaning their own work areas.

The respondent said he was reducing appellant's hours to twenty per week. He expressed his disappointment but accepted that business was well down and that the respondent was taking similar action with other parts of the business. The respondent asked him to take his time in making his decision and to discuss it at home with his wife. The appellant informed the respondent immediately that he would not accept the reduced hours because he would be better off getting unemployment benefit together with all the other benefits like a medical card. The respondent informed him that it had no alternative but to make him redundant and gave him two weeks' notice.

MMG completed the RP50 redundancy form on line. A copy was furnished together with receipt proof of 3 February 2009 as the submission date. Statutory redundancy was calculated and a copy of the calculation was given to the appellant.

On 6 February 2009 the appellant spoke to RM to inform him that he had changed his mind and would take the twenty hours per week. The respondent was delighted because letting people go was the last thing the respondent wanted to do.

To be fair to the appellant, the respondent gave him two weeks' notice before he moved to the new hours.

On 23 February 2009 the appellant started to work twenty hours per week.

On 22 March 2009 (over six weeks after accepting the new hours) the appellant informed RM that he was leaving the respondent. He demanded that he should get paid his statutory redundancy. He was informed that, as he was now leaving of his own free will, he could not get any redundancy. The respondent explained that people who left their jobs were not entitled to redundancy and that the respondent would not be entitled to the redundancy rebate from the relevant government department unless the respondent falsely submitted that it had made the appellant redundant.

On 27 March 2009 the appellant finished employment with the respondent.

On several occasions in the months following the appellant leaving his employment with the respondent, the appellant spoke to RM and MMG looking for the company to sign social welfare forms that admitted that the respondent had “fired” him. On all occasions, the respondent told him that it could not sign the forms as it would be “illegal” and “it amounted to social welfare fraud”.

Regarding the “doctor scheme” that had been alluded to by the appellant, it was stated that the respondent did pay for all (personal and work-related) doctor visits to the respondent’s company doctor. On 25 July 2008 the respondent wrote to all employees informing them that the respondent could no longer afford to continue this benefit but would subsidise it by twenty-five euro per visit. The respondent felt this was still an excellent benefit that very few companies offered to their staff.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal finds that a redundancy existed in respect of the claimant’s employment with the respondent. The Tribunal finds that the claimant accepted alternative employment with a reduction in his remuneration of not less than half his normal remuneration and a reduction in his working hours of not less than half his normal working hours for a temporary period not exceeding 52 weeks. Therefore the claim under the Redundancy Payments Acts, 1967 to 2003 succeeds.

The Tribunal accepts that the respondent refused to pay the claimant the redundancy sum because the respondent mistakenly believed that the claimant was not entitled to a redundancy payment.

Accordingly, under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that the appellant is entitled to a redundancy lump sum based on the following details:

Date of birth: 27 April 1964
Date of commencement: 03 January 2006

Date of termination: 20 February 2009
Gross weekly pay: €420.00

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)