

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – appellant

CASE NO.
RP800/2009

against

EMPLOYER – respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs M Quinlan

Members: Mr D Moore
Ms N Greene

heard this appeal at Dublin on 1st February 2010 and 11th October 2010

Representation:

Appellant(s): On the first day of hearing :
Mr Blazej Nowak
Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

The appellant appeared without representation on the second day of hearing

Respondent(s): Mr. Richard Lee
Lee & Sherlock, Solicitors
Unit 5 Ground Floor, Block F, Nutgrove Office Park
Rathfarnham, Dublin 14

The decision of the Tribunal was as follows:

The respondent company raised a preliminary point on the first day of hearing in relation to the appellant's service. According to the respondent company the appellant commenced his employment on February 19th 2007 and not in 2005 as the appellant contended. His employment ceased on September 10th 2008 and therefore he was not entitled to make an appeal under the Redundancy Payments Acts. The hearing was adjourned to allow both parties to produce relevant documentation and for the respondent to bring the company accountant to give evidence. The Tribunal instructed that an interpreter be arranged for the second day of hearing.

Respondent's Case:

The Accountant for the respondent company gave evidence that in January 2007 the respondent company had two directors and one employee. In February 2007 he received a phonecall from a company director who notified him that the appellant had joined the company and requested that he process his details. As the Accountant was not provided with a P45 from the appellant he submitted a P46 form to the Revenue Commissioners on February 26th 2007. He acknowledged that on the P35 form he submitted to the Revenue Commissioners for the year 2007 he indicated that the appellant had not started until May 2007 but he contended that this was a mistake on his part.

An employee for the respondent company gave evidence that the appellant did not start with the company until 2007.

Appellant's Case:

The appellant gave evidence that he commenced his employment with the respondent company in September or October 2005. He named sites that he had worked on for the company. He did not produce any supporting documentation. He contended that he had given his representative a list of the sites that he had worked on prior to 2007, but his representative did not come to the hearing.

Determination:

Due to the lack of documentary evidence the appellant was unable to prove that he started in September or October 2005. The respondent produced documentary evidence which stated that the appellant's employment commenced on February 19th 2007. This date was also confirmed by the company's accountant who registered the employment. As the appellant was unable to show that he had the requisite 104 weeks continuous employment in order to bring an appeal under the Redundancy Payments Acts the Tribunal does not have jurisdiction to hear the appeal.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)