

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE -**Appellant**

CASE NO.
RP2229/2009

against
EMPLOYER -**Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Mr T. Kelly

heard this appeal at Kilkenny on 13th October 2010

Representation:

Appellant: In Person

Respondent: Mr. Tim Kiely, Poe Kiely Hogan, Solicitors,
21 Patrick Street, Kilkenny

The decision of the Tribunal was as follows:

Background:

The respondent conceded that a redundancy situation existed in relation to the appellant's employment. The dispute between the parties was in relation to the duration of employment and the sum of redundancy paid to the appellant.

Appellant's Case:

It was the appellant's case that he had commenced employment with a company (herein after referred to as Company M) as an apprentice in 2002. At that time the director of the respondent was also an employee of Company M but he later set up his own company which sub-contracted work from Company M.

From in or around May or June 2003 the appellant reported only to the director of the respondent company. As time passed, the appellant remained on Company M's books and was paid with a cheque from Company M. However, the respondent company had an account with Company M

and it was in fact the respondent company who was actually paying the appellant's wages. During this time the appellant was answerable to the director of the respondent company.

On 1st January 2007 the director of the respondent told the appellant that he would be working for the respondent, as Company M no longer wanted the appellant going through their books. From then on his employment was transferred to the respondent.

The appellant remained in the respondent's employment until his position was made redundant in 2009. The appellant received a redundancy lump sum payment from the respondent of €3,300 but it was advanced by the appellant that as his employment had transferred from Company M to the respondent, his redundancy payment should have been calculated using his initial date of commencement.

In cross-examination the appellant confirmed that he ceased to receive cheques from Company M as of December 2007, after which time he received cheques from the respondent company. The appellant confirmed that the only P45 he received was at the end of his employment with the respondent.

Respondent's Case:

The director of the respondent company stated that he was an employee of Company M until October 2002. He later registered a limited company. Company M employed the appellant. The director recollected that a Mr. P of Company M had approached him and informed him that Company M did not have any further work for the appellant. An agreement was reached between them that the appellant would be at the respondent company's disposal and the director would in turn price the work accordingly for the work it carried out for Company M.

Near to the completion of the appellant's apprenticeship, Mr. P of Company M informed the director that the appellant would be let go once he had qualified. As work was plentiful the director of the respondent offered the appellant a job as and from 1st January 2007 and PRSI contributions were paid for the appellant from this date. The director stated that he held a P45 for the appellant from Company M showing that the appellant's employment had terminated with that company on 21st December 2006. It was a matter for Company M to answer as to whether or not the appellant had been properly informed about the end of his employment with that company. The appellant's redundancy lump sum was calculated on the basis of the date of commencement being the 1st January 2007.

In cross-examination it was put to the director that prior to January 2007 the appellant performed work on behalf of the respondent not only on Company M's sites but also on private sites. The director confirmed that when he priced work for Company M he took into account that the appellant was at his disposal to carry out the work.

Determination:

The Tribunal carefully considered the evidence adduced and is satisfied that a transfer of undertakings existed.

The Tribunal finds that the appellant's redundancy lump sum payment should have been calculated based on the following criteria:

Date of Birth: 20th February 1986
Date of Commencement: 7th June 2002
Date of Termination: 10th July 2009
Gross Weekly Pay: €760.00

The Tribunal notes that the appellant has already received the sum of €3,300 as a redundancy payment.

It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.

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)