

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE –**Appellant**

CASE NO.  
RP1227/09  
MN1084/09

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. B. Glynn

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

heard this appeal at Limerick on 25<sup>th</sup> May 2010

#### **Representation:**

Appellant: In Person

Respondent: Ms. Yvonne Quinn B.L. instructed by Sarah Ryan Solicitors,  
26 Glentworth Street, Limerick

#### **The decision of the Tribunal was as follows:**

Dismissal as a fact was in dispute in this case.

#### Respondent's Case:

The respondent's business entails drawing clay from construction sites. The respondent outlined that he had a good working relationship with the appellant, who was his best employee. The appellant commenced employment in October 2006 as a driver but he also performed other duties such as tidying the depot yard and washing the lorries. The appellant was paid approximately €900.00 gross per week and was paid in cash on Fridays, when he received a net payment of €700.00. His pay reduced in the last number of weeks of his employment to €500.00 per week. Figures compiled by the respondent's accountant were opened to the Tribunal. The figures detailed wages paid to the appellant from 2006 to 2009.

It was the respondent's case that on the 5<sup>th</sup> March 2009 the appellant approached him and requested his P45. The respondent did not think that the appellant would actually leave his employment but he still asked his accountant to prepare a P45 document. The appellant also asked the respondent for a letter, which would enable him to claim unemployment benefit. The respondent agreed and

provided the appellant with a letter dated the 5<sup>th</sup> March 2009, which stated,

“As and from the 6<sup>th</sup> March 2009, we have no further work for you. Accordingly, we are going to issue you with a P45 on that date.”

The respondent stated that he had work available to the appellant but he wrote the letter to assist the appellant in claiming unemployment benefit.

However, the appellant returned to his position with the respondent on Monday, 9<sup>th</sup> March 2009 and continued in his position for a further two weeks. A number of tachographs and dockets were submitted to the Tribunal in support of this. A P45 for the appellant showing the date of cessation as the 27<sup>th</sup> March 2009 was opened to the Tribunal.

On the 30<sup>th</sup> March 2009 the appellant telephoned the respondent and asked him if he could guarantee him work. The respondent told the appellant he could not guarantee work but he would contact the foreman on the site and establish what work remained. The respondent was unable to contact the foreman and a dispute then arose with the appellant. In the end the matter was resolved and the respondent paid the appellant €500.00 for one day's work. The appellant told the respondent he would not hear from him any further.

An individual was employed in the appellant position. This employee can also carry out repairs as part of his duties. He started shortly after the appellant left his employment and continues to be employed to date. The respondent had four lorries but that number has reduced to two. Similarly, the number of employees has reduced from four to one. The respondent stated that it was always his intention to retain the appellant on one of the two remaining lorries, as he was his best employee.

During cross-examination it was put to the respondent that the amount of cash paid to the appellant had varied but the respondent did not accept this. It was the respondent's case that a set amount of €700 net was paid to the appellant each week.

#### Appellant's Case:

It was the appellant's case that the respondent telephoned him on Wednesday, 4<sup>th</sup> March 2009 and informed the appellant that he was being let go. The respondent had previously mentioned to the appellant that work levels and profit margins had decreased. The appellant's wages had reduced in the last number of weeks of his employment. The respondent told the appellant that his wages were too high. On the 4<sup>th</sup> March 2009 the respondent informed the appellant that he should have some further work in the future in Kildare but this work was never offered to the appellant. The appellant was aware that the respondent had employed two other individuals after his employment had ceased.

The respondent handed the appellant his P45 and a letter on Thursday, 5<sup>th</sup> March 2009. On the 6<sup>th</sup> March 2009, the appellant attended at his local social welfare office and they informed him that he should attend again on Monday, 9<sup>th</sup> March 2009 as he had been paid for the 6<sup>th</sup> March 2009. The appellant requested an RP50 from the respondent but he did not receive it.

The appellant vehemently disputed that he had returned to work with the respondent after the 5<sup>th</sup> March 2009. He often signed tachographs in advance and it was his belief that the respondent had someone else complete the details of the tachographs to the end of March in an attempt to avoid

paying minimum notice to the appellant. The appellant submitted a P45 from the respondent, which showed the date of cessation to be the 6<sup>th</sup> March 2009. The appellant stated that he did not receive a P45 from the respondent with a termination date of the 27<sup>th</sup> March 2009, as stated by the respondent.

The appellant disputed the accountants figures submitted to the Tribunal by the respondent and stated that the amount of cash that he received from the respondent varied.

During cross-examination the appellant refuted that the handwriting on the tachograph for the 4<sup>th</sup> March 2009 was the same as that on other tachographs for further dates in March 2009.

**Determination:**

There was a significant amount of conflicting evidence in this case. The Tribunal carefully considered the evidence and the documents adduced at the hearing. The Tribunal found the appellant to be the more credible witness in this case and accepts his evidence that the respondent terminated his employment in early March 2009. However, the position for which the appellant was employed did not diminish or cease to exist and another individual was employed in his position after his employment ended. The Tribunal cannot find in such circumstances that a redundancy situation occurred. A claim was not brought by the appellant under the unfair dismissals legislation and therefore the Tribunal has no jurisdiction to make a finding under that legislation. The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

The Tribunal accepts that the appellant's employment was terminated without notice and finds that he is entitled to €1,310.00 (being the equivalent of two weeks gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)