EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.
EMPLOYEE - appellant RP213/2010

against

EMPLOYER - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Madden BL

Members: Mr. M. Carr
Mr. A. Butler

heard this appeal in Dublin on 29 September 2010

Representation:

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Appellant(s):
In person

Respondent(s) :
XXXXXX

The decision of the Tribunal was as follows:-

The appellant claimed that his employment, which commenced on 17 September 2001, ended by reason of redundancy on 18 December 2008. His gross weekly pay was €627.69. He claimed that he had been ignored when he had applied for redundancy from the respondent.

In his written defence, the respondent disputed the appellant's claim for redundancy on the grounds that there was no redundancy payment due to the appellant, that the amount claimed was excessive and that no reply had been received to queries raised with the Department of Enterprise, Trade and Employment (hereafter referred to as the Department).

It was denied that this redundancy claim had ever been ignored by the respondent in that he had completed all forms and requested clarification of some points from the Department with regard to the appellant's eligibility for redundancy in respect of the period while he was an apprentice. Two such letters had never been answered.

It was contended that the appellant had not in fact been in the respondent's employment for the twenty-four months prior to being laid off on 19 December 2008. The respondent had given details of the breaks in employment on each of the two forms that he had been requested to complete.

It was alleged that the breaks in employment were as follows:

From Week 29 of 2007 to Week 31 of 2007 inclusive (three weeks) due to insufficient work;

From Week 1 of 2008 to Week 7 inclusive (eight(sic) weeks) again due to insufficient work. During this period the respondent secured employment for him with another employer (BR).

It was contended that the respondent had received conflicting information from FAS when he had asked whether or not the appellant was entitled to redundancy for the period when he had been training as an apprentice.

At the Tribunal hearing, the appellant's father, who was not listed to be a representative did not seek to be recorded as a representative but said that he was present to assist the appellant.. The respondent's sister, who was listed as a representative, said that she had been told to name herself as a representative on the respondent's notice of appearance and that she had not heard anything to the contrary since then. She stated that she had no legal background.

The Tribunal reserved the right to rule on who was entitled to act as a representative but said that it would try to keep the hearing informal.

The Tribunal was told that the respondent had been a small trader in the construction industry since 1994 and that in the summer of 2007 there had been a break of three weeks in the appellant's employment. Subsequently, the respondent had no work from 21 December 2007 to February 2008. It was stated on behalf of the appellant that the appellant had been recorded as having had forty-nine weeks of work in 2007.

Under oath, the respondent was asked if he had said to the appellant in the summer of 2007that the appellant was on lay-off. The respondent replied that he had said that there was no work but that he had not written to the appellant. 10 August 2007 was the appellant's first wages after this and they then worked up to 21 December 2007. The appellant got a P60 and not a P45. The first time, the respondent knew that there would be a job starting in August. The second time, he did not know. He accepted that he not given the appellant a contract of employment and did not claim that he had given him a notice of lay-off on these occasions.

It was argued for the appellant that the summer 2007 break had just been holidays and that the position surrounding the appellant's work for BR had not been known except that the respondent had arranged it. The respondent acknowledged that his business had a fortnight's summer holidays and explained that the employment with BR was with the respondent's cousin and that the appellant

could have stayed working for BR rather than going back to the respondent..

The respondent argued that no redundancy was due to the appellant. It was argued for the appellant that it had only been in December 2008 that a P45 and a RP9 form had come into being.

The respondent's representative submitted that redundancy had not entered the respondent's head in that he had written to the Department about the appellant having the required 104 weeks' service and raised queries because he had not thought that redundancy was due. However, he had never got clarification and had been very surprised to be called to the Tribunal hearing. The respondent now relied on the contention that the appellant had not had 104 weeks' continuous service prior to lay-off. The respondent felt that he had always been very fair to employees and had paid a carpenter's wages to the appellant when not obliged to do so. He (the respondent) was just an ordinary man with a home and a family.

Asked if he was still in business, the respondent said that he was "doing bits and pieces". It was said for the respondent that, since 2008, the construction industry had "plummeted".

Under oath, the appellant said that in summer 2007 he had had three weeks off before starting on a new construction project. He took two weeks' holidays and a week off. When they closed for Xmas 2007 he was told that he could work for the respondent's cousin and go back to the respondent in February 2008 when work picked up. It was all very informal but he did go back to the respondent in February finishing with the respondent's cousin on a Friday and working for the respondent on the following Monday. He only got a P45 and "the lay-off form RP9" the when he was made redundant at the end of December 2008. He then got a redundancy RP50 form from the Department's website but the respondent would not sign at the bottom of the form.

The respondent acknowledged that he had refused to sign the RP50 saying that he had put in breaks in service and that the Department would not answer his questions.

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Determination:

Having considered the evidence adduced, the Tribunal finds that there were no breaks in the appellant's service in that it was satisfied that the intention was not to terminate in 2007. 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: 28 February 1985
Date of commencement: 17 September 2001
Date of termination: 18 December 2008
Gross weekly pay: €627.69

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)