

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP1857/2009
MN1618/2009

- Appellant

against
EMPLOYER

- Respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr. W. O'Carroll
Ms H. Henry

heard this appeal at Loughrea on 13th April 2010

Representation:

Appellant(s) : In Person

Respondent(s) : Geraghty & Company, Solicitors, 1 Rosemary Avenue, Eyre Square, Galway

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant gave evidence. He commenced employment with the respondent in January 2002 as a cabinetmaker. He received a wage but a weekly bonus of € 100 if he was present and on time for work every week. At the end of January 2009 he was put on a 3-day week. He only did 1 week then the owner (hereafter known as SC) informed him there was no more work. He went to the Department of Social Welfare and was told he would not get any payments until he received his P45. He received his P45 on May 22nd 2009. He got advice from the Citizens Information Centre who advised him he had a case for redundancy and should lodge a claim with the Employment Appeals Tribunal.

He did receive the letter from the respondent's accountant requesting he complete the RP50 form for redundancy. He again sought advice and was told not to sign it, as he may not get paid and to wait for his Employment Appeals Tribunal hearing to take place. He did not receive any

notice.

On cross-examination he said the € 100 bonus payment was if he was in on time for work. He did not recall signing his contract of employment that stated if he worked outside the workshop he received € 10 per day and that he would receive € 50 per week for punctuality plus full attendance. During his time with the respondent records were submitted that the appellant had only travelled twice during his employment. He had received the € 50 punctuality payment 42 times in 2007 and 31 times in 2008.

He refuted he had worked for anyone else at weekends but had helped his brother out and was unpaid and had worked in a local pub but again was unpaid. He agreed he had received the letter dated November 28th 2008 and January 9th 2009 regarding the 3-day week and understood that the company was making a loss. When put to him he refuted he had spend 7 hours on his last day assembling 3 drawers which would only have taken 1 hour. He refuted he had not received the letter dated May 22nd 2009 stating:

“Dear (appellant)

Following your conversation with SC on the 20th May 2009 and your decisions not to return to work I have enclosed your P45 for your attention”.

He stated that he had only received a complimentary slip saying “kind regards” with his P45. He could recall receiving a call from SC in Mid May 2009 offering him work on apartments in Menlo. When asked he stated he did not know what an RP77 form was.

Respondent’s Case:

SC gave evidence. He explained the company involved making furniture and kitchens. The appellant had previous contracts but had signed the one produced at the hearing when he qualified on July 7th 2006. The appellant had requested a pay rise and the bonus scheme was introduced to encourage the appellant. He had problems arriving on time for work on Mondays. He did not receive a € 100 bonus payment weekly.

Work declined and all staff bar the office staff and the Foreman were put on a 3-day week. On November 28th 2008 the appellant attended a meeting were 12 of the other 14 staff and were informed of the situation. On December 19th 2008 he secured a contract for apartments in Menlo and went to size them up the following day. All the staff were aware of the contract that was to commence in February 2009. However due to complications between the builder and the owner this was delayed March then April and finally May 2009. He spoke to the Foreman about who he would use for the job and the appellant was one of them.

On March 4th 2009 the appellant requested his P45 and redundancy to pay for his car as he was thinking of going to Australia. He contacted the appellant about the Menlo job but he declined the offer of the job as he was helping his brother fit windows. A former colleague got the job. The next he heard there was an appeal for A redundancy payment by the appellant with the Employment Appeals Tribunal.

When asked he said he had not notified all staff of the pending Menlo contract in writing. He accepted his accountant’s letter stated the appellant was entitled to redundancy but having sought legal advice he found this was not the case.

The Foreman gave evidence. He stated that the appellant had poor attendance and would have to keep an eye on his work. All staff were aware of the pending Menlo job and work was very quiet over January and February 2009. SC informed him the appellant was not returning for the Menlo job. He was stunned.

Determination:

The Tribunal has carefully considered the evidence submitted by both parties in this case. The Tribunal are not satisfied that the employees were properly advised of the situation and the prospect of future work. They also find that the appellant's contract of employment was terminated by the respondent by reason of redundancy. The respondent's representative submitted that Section 12 (1) of the 1967 Act applied in this appeal, however the Tribunal finds this is not the case.

Accordingly, the Tribunal determines that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on his continuous service and the following information:

Date of Birth:	03 June 1985
Date of commencement of employment:	04 January 2002
Date of termination of employment:	06 February 2009
Gross weekly pay:	€ 520.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal awards the appellant the sum of € 2,080.00, this amount being equivalent to four weeks' pay at € 520.00 per week.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)