

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
RP1991/2009
MN1702/2009

against

EMPLOYER

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. M. Levey BL

Members: Mr. T. O'Sullivan
Mr. F. Barry

heard this appeal in Dublin on 8 June 2010

Representation:

Appellant(s):

Mr. Marcin Szulc, Maguire McClafferty, Solicitors,
8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent(s):

Mr. Sean Foy, Sean Foy & Company, Solicitors,
2 Cuil D'Ean, Altamount Street, Westport, Co. Mayo

The decision of the Tribunal was as follows:-

The appellant sought redundancy and minimum notice awards in respect of an employment with the respondent which commenced in June 2005. It was claimed that he worked for the same people until his dismissal (in September 2009). However, he was told that his employer changed during his employment and that he did not have the two years of continuous service with the respondent required to qualify for a redundancy payment.

It was common case that the appellant had an initial period of employment with the respondent and that he had a subsequent period of employment with the respondent but it was alleged that there had been an intermediate period when his employer had been a man (JK) whom the appellant described on his claim form as a foreman.

The respondent disputed the appellant's claims on the following basis:

The appellant worked for the respondent for a number of months in 2005 and 2006. In March 2006, at a particularly busy period in a project, the appellant informed SS (the respondent's managing director) that he would leave unless he was paid more money. SS did not like this ultimatum and the appellant was not willing to compromise on the increase he wanted and so the appellant left the respondent's employment.

The next time that the appellant appeared on one of the respondent's contracts, he was working for JK who was a "bona fide" subcontractor.

The appellant continued to work for JK until he approached one of the respondent's foremen in 2009 and gave him a "sob story" that JK was not treating him fairly and that he would like to go working for the respondent again. At the time SS was away and the respondent's contracts manager – not knowing the history – agreed to employ him. SS was not in agreement with the decision but, as the decision was made in his absence, he had no choice but to accept it.

The appellant was laid off by the respondent in 2009 when work started to get scarce and he was selected purely on the basis of 'last in first out'. Incidentally, the appellant also had a claim for personal injuries against the respondent which the respondent and its insurers considered fraudulent. SS had also been told that the appellant had another claim "in" against JK.

Determination:

Having heard sworn testimony from three witnesses for the respondent (SS, JK and the abovementioned contracts manager) and from the appellant, the Tribunal unanimously finds that the appellant failed to make out his claim that he had enough continuous service with the respondent to have been entitled to a redundancy lump sum. It was clear that he was employed by different employers and had signed contracts confirming this.

The question of transfer of undertaking does not arise. A transfer of undertaking did not occur. Reference to that legislation is irrelevant.

The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

The Tribunal did not find the respondent to have been in breach of the Minimum Notice and Terms of Employment Acts, 1973 to 2005. The claim under the said legislation fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)