

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE -*Appellant*

CASE NO.  
RP1072/2010  
MN740/2010  
WT340/2010

against

EMPLOYER -*Respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr R. Murphy  
Mr P. Woods

heard this appeal at Dublin on 20th January 2011

#### **Representation:**

Appellant: In Person

Respondent: Miley & Miley, Solicitors, 35 Molesworth Street, Dublin 2

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

Dismissal as a fact was in dispute in this case.

The respondent company employed the appellant as a carpet fitter. His employment terminated on 24 January 2009. He submitted form T1A to the Tribunal on 9 May 2010.

The appellant had not submitted his claim under the Redundancy Payments Acts, 1967 to 2007, within the stipulated 52-week time limit. The reason put forward by the appellant for the delay was that he did not seek advice in the matter until approximately one year after his employment had terminated.

**Determination on Preliminary Issue:**

The Tribunal determined that reasonable cause did not exist to prevent the appellant from lodging a claim under the Redundancy Payments Acts, 1967 to 2007, within the stipulated 52-week time limit. Accordingly, the claim was dismissed.

**Substantive Issue:**

It was the appellant's case that the director of the company informed him on 24 January 2009 that there was no further work for him. The appellant was informed that his P45 was ready for collection. When he collected his P45 from the office he was provided with a letter dated 28 January, which stated that due to a steep downturn in business it had been necessary for the respondent to terminate his employment. The appellant was unaware of whether or not other employees were made redundant.

A few weeks later the appellant approached the director and requested the completion of a form to allow him to claim on his payment protection payments from the bank.

The appellant stated that he was owed minimum notice and holiday pay owing for the past year.

During cross-examination it was put to the appellant that payment protection payments could only be claimed in circumstances where the appellant had been made redundant but not if the appellant had resigned his employment. The appellant accepted this to be the case.

It was the respondent's case that the appellant provided his resignation verbally to the director on 24 January 2009. The director gave evidence that the appellant had attended at the shop premises and informed him that it was "important" that he was not working for the respondent. He told the director that if he was out of work he could claim on his payment protection payments, which would cover his mortgage for a period of twelve months. The director told him there was no redundancy situation. The appellant told him that he did not want a redundancy payment but he did want a form completed for the bank stating he had been made redundant.

An employee in the office assisted the appellant with completing the form for the bank. The director accepted that he had signed letter dated 28 January, which was provided to the appellant. The director stated that a redundancy situation did not arise. The respondent employs fourteen carpet-fitters presently, the same number as when the appellant was an employee.

At the time the appellant resigned he was owed holidays for 2009. A cheque for €153 had been forwarded to him in this regard. The director refuted that the appellant was owed holidays from previous years as the employees took annual leave each year and were paid at the time they took those holidays.

**Determination:**

The Tribunal carefully considered the evidence. The Tribunal accepts the respondent's evidence that the appellant resigned from his employment with the company. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails.

The Tribunal was satisfied from the evidence that the appellant was paid the relevant holiday pay. The claim under the Organisation of Working Time Act, 1997 fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

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