

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE
-appellant

CASE NO.

RP497/2010
MN282/2010

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: Mr D. Hayes

Members: Mr M. Carr
Mr J. Flannery

heard this appeal at Navan on 18th February 2011

Representation:

Appellant: Ms Lorraine Walsh, Ashbourne Citizens Information Centre, Unit 2, Killelland Square, Ashbourne, Co Meath

Respondent: Mr. Gareth Kyne, Oengus Lodge, Newgrange, Slane, Co. Meath

The decision of the Tribunal was as follows: -

The respondent employed the appellant as an apprentice plumber. The respondent has been in business since 1986 and over the years has trained approximately twenty apprentices. At one time he had twelve employees. Like many in the construction industry, the respondent began to experience difficulties in 2007. He had never let an apprentice go and to his great credit he sought to keep the appellant and his fellow apprentice on long enough for them to complete their apprenticeships.

The Tribunal heard evidence from a FÁS official responsible for the mid-Meath area. He told the Tribunal that the apprenticeship consisted of seven phases. Phase 6 was a ten-week college-based phase. Phase 7 consisted of a twelve-week employment-based phase wherein the employer assessed any outstanding competencies. An apprenticeship lasts for a minimum of four years. The appellant was registered with FÁS on 12th November 2004. He finished Phase 6 on 20th March 2009. His Phase 7 assessment was received by FÁS on 14th July 2009 and he qualified on 5th August 2009.

The week before he was due to finish phase 6 he spoke to the respondent who told him that he had no more work for him. He accepted in cross-examination that the respondent had never actually told him that he was dismissed. The respondent told the Tribunal that his concern was to get the appellant through his apprenticeship. He had spoken to FÁS in the summer of 2008 to see if his college placement could be advanced. This was not possible so he struggled to keep the appellant employed until the next available course began in early 2009. He had no work available for the appellant after the end of Phase 6 and so placed him on lay-off. He told the Tribunal that he did not dismiss the appellant in March 2009.

Determination

The Tribunal is satisfied that the respondent at all times sought to do his best for his two apprentices in difficult times. He could have dismissed them in the course of their apprenticeships, as others have done, and left them unqualified. However, the Tribunal is satisfied that they were dismissed in March 2009. While his Phase 7 assessment was received after his dismissal, the Tribunal is satisfied, on the basis of what it was told by the FÁS official, that this was quite proper so long as the competencies were assessed during a period of employment. On the basis of what it was told by both parties, the Tribunal is satisfied that such was the case. The appellant was issued with a P45 indicating that his employment had ended on 13th March 2009. The respondent told the Tribunal that this was done so as to allow the appellant claim social welfare while on lay-off. He had no explanation as to which he did not simply provide a letter confirming that the appellant was on temporary lay-off. A P45 is a certificate of cessation of employment. It was issued on the respondent's behalf. It was reasonable for the appellant to understand that being told that there was no more work for him together with the receipt of a P45 constituted a dismissal. The Tribunal is satisfied that the appellant was so dismissed. This dismissal did not take place within one month after the ending of his apprenticeship and he is therefore entitled to a redundancy payment under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth:	25 th August 1986
Date of commencement:	12 th November 2004
Date of termination:	13 th March 2009
Gross weekly pay:	€480.00

The appellant had one break in service where he was on lay-off from the 28th March 2008 to the 2nd June 2008.

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

The appellant did not receive his statutory notice entitlement. Pursuant to his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal awards the sum of €960.00 being the equivalent to 2 weeks notice.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____

(CHAIRMAN)