

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
RP2947/2009, MN683/2011

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 N. O'Carroll-Kelly B L

Members: Mr M. Noone
Mr J. Jordan

heard this appeal at Wicklow on 15th March 2011

Representation:

Appellant : Freehill, Solicitors, First Floor, 3 Wentworth Place, Wicklow

Respondent : Ms Libby Charlton B L instructed by
T P Brennan & Co, Solicitors, Emily Square, Athy, Co Kildare

In declining jurisdiction to hear a claim under the Unfair Dismissals Acts, 1967 to 2007 the Tribunal allowed an appeal under the Minimum Notice and Terms of Employment, 1973 to 2005 to be added to this hearing.

The decision of the Tribunal was as follows:

Respondent's Case

This company is primarily concerned with renting construction and demolition equipment to customers in the agricultural and building sectors. It also provides operators who control and carry out the required work. It was the practice of the company up to 2008/09 to provide and operate its equipment according to its client's instructions irrespective of the prevailing weather conditions. That practice was no longer in place by April 2009 due to a decline in operations and a lesser urgency to proceed with jobs in adverse climatic conditions.

Such conditions prevailed on 9 April 2009 when the proprietor of the business informed the appellant that there would be no work for him for the coming days. This was the first time the respondent acted in this way towards the appellant since he commenced employment with the company in early 2002. The appellant was employed on a fulltime basis and never caused any difficulty for the respondent. The employer never furnished the appellant with a written statement of his terms and conditions of employment nor issued him with payslips. From 9 April to the end of June 2009 the respondent did not engage the services of the appellant on a fulltime basis.

The proprietor of the company accepted that neither he nor the respondent had paid the appellant for his work from 9 April onwards. He added that it was untrue that he told the appellant he could not pay him and informed the Tribunal that this wages for that outstanding period were still available to the appellant “if he picked them up”. The witness also commented that when the appellant was offered work on a number of occasions from 9 April onwards he refused to accept some of those offers. The witness was certain that the appellant was either working elsewhere or signing on for welfare benefits on those occasions.

Appellant’s Case

The appellant contended that it was out of necessity that he signed on for welfare payments, as the respondent had not paid him for his work from 9 April. Up to the day of the hearing the appellant still had not received any remuneration from the respondent for his labours from 9 April to the end of June 2009 despite asking for it on several occasions. By mid April the appellant obtained a letter from the proprietor of the respondent stating that there was no work for him due to the down turn in the building trade and the poor weather conditions for farm work. That brief letter ended with the hope that when weather conditions improve the proprietor would be in a position to “re-employ” the appellant.

Determination

The respondent’s offer to the appellant that his job was still there rings hollow in the context that the company did not discharge its obligation to actually pay the appellant for his services from 9 April to end of June 2009. It is clear that the respondent placed the appellant on lay-off on 9 April 2009 and subsequently engaged him for work on a piecemeal basis up to 30 June 2009. What is not clear is whether a recognised employer/employee relationship i.e. a contract of services existed between the parties from 9 April onwards. The Tribunal is not convinced that this was the case.

Having considered the evidence the Tribunal finds that the appellant’s employment with the respondent was terminated by way of redundancy and accordingly awards the appellant a statutory lump sum under the Redundancy Payments Acts, 1967 to 2007 and based on the following:

Date of Birth: 03 May 1978
Date of Commencement : 02 January 2002
Date of Termination: 09 April 2009
Gross Weekly Wage: €500.00

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

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 succeeds and

the appellant is awarded €2,000.00 as compensation under those Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

