

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
RP2586/2009

against

EMPLOYER – *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Fahy BL

Members: Mr W O'Carroll
Ms H Henry

heard this appeal at Galway on 22nd October 2010 and 11th February 2011

Representation:

Appellant(s): In person

Respondent(s): On the first day of hearing:
Mr John Carr, Solicitor
Liosbaun House, Tuam Road, Galway

On the second day of hearing:
No appearance or representation

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant gave evidence that his employment as a kitchen fitter commenced in September 2006. He contended that he worked continuously until June 30th 2009. The original owner of the business sold it at the end of 2008. He continued to work for the new management. He did not receive any documentation in regard to the change of ownership. He received his P45 from the first employer in January 2009, which he passed onto the second employer.

During cross-examination the appellant stated that the original employer told him that his job was safe. He didn't seek a redundancy payment from the original employer because he had a job. In

January 2009 he worked Ballinrobe with the original employer, but he maintained that this was only for two days. The second employer told him to do it to help out the original employer. He did not know who was paying him, the cheque came from Briarhill. He was paid by cheque and some cash. He disputed that the cash was for diesel as he maintained that he had a diesel card. The original employer had continued his business of supplying the kitchen units to the kitchen fitting business.

In May 2009 the second employer asked him to work as a sub-contractor but he refused. His employment was terminated by the second employer on June 30th 2009. The P45 stated that the start date was February 23rd 2009. The appellant did not dispute that, as he knew the second employer had taken over in January or February 2009. He disputed that the second employer had issued payslips.

Respondent's Case:

The managing director (MD) of the respondent company disputed that the appellant was entitled to a redundancy payment. The MD took over the kitchen fitting business in February 2009 and the appellant was not an employee at that time. The MD had previously been an employee of the business and he had received his P45 along with all the other employees when he bought the business. He did not receive a redundancy payment. He did not continue the appellant's employment. He hired him later on February 23rd 2009, but ultimately could not afford to keep him. The appellant worked with the original employer in Ballinrobe for a few weeks before coming to work for him. He paid the appellant cash to reimburse for diesel purchased for the van and as a goodwill gesture when he left. The appellant did not query his P45 or seek a redundancy payment from him. He believed that the original employer should have paid the appellant a redundancy payment. He didn't know if the appellant had been issued with a contract of employment.

An employee of the company gave evidence that she administered the wages. She issued the appellant's P45. Payments to the appellant did not commence until after his commencement on February 23rd 2009. The appellant was issued with payslips, but none were supplied to the Tribunal.

The Tribunal adjourned the hearing and requested that on the subsequent day of hearing that the parties produce paperwork regarding payments made to the appellant between January 2009 and February 23rd 2009. Neither the respondent nor a representative on its behalf appeared on the second day of hearing.

Determination:

The Tribunal finds that the appellant's employment transferred to the second employer and that a redundancy situation existed in relation to his employment. Accordingly, he is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following information:

Date of Birth:	30 th October 1958
Date of Commencement:	18 th September 2006
Date of Termination:	30 th June 2009
Weekly Gross Pay:	€550.00

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

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)