

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE – *appellant*

CASE NO.
RP196/2010

against

EMPLOYER – *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy SC

Members: Mr. T. O’Grady
Mr. F. Barry

heard this appeal at Dublin on 3rd March 2011

Representation:

Appellant: Mr. Tom O’Dwyer, 237 Landen Road, Ballyfermot, Dublin 10

Respondent: Ms. Joanne Kirby BL instructed by Mr. Barry O’Donnell,
of Houlihan O’Donnell Flaherty Solicitors, 105 Ranelagh Road,
Dublin 6

The decision of the Tribunal was as follows:

Appellant’s Case

The appellant gave evidence. He was a senior electrician and his job was doing maintenance work in city centre department stores. He was employed by the respondent from March 2003 to September 2009. During that time he received one written warning, which he disputed.

The week the appellant’s employment ceased he came to work as usual in the city centre on Thursday. The managing director told him that the contract with the store might not be renewed. The appellant was sent to a job in Coolock for two days. On the second day the appellant asked if he was needed on Saturday. He was told that the contracts manager would contact him on Monday. The contracts manager did not contact him. The appellant phoned the office and asked the administrator what was happening. She said nothing.

About a week after he ceased work the appellant contacted Social Protection to enquire about benefits. He was informed that he needed his p.45. When he phoned the administrator the appellant told her where to send his p.45. No one from the respondent company contacted him during that week.

The appellant believed that his employment had been terminated. The appellant did not invoke the grievance procedure because he was not aware of it. He did have a contract of employment but its importance was not explained to him.

Two electricians from the respondent company covered maintenance work in city centre stores. The day he went to Coolock someone else was doing what had been his job that day.

Respondent's Case

The contracts manager gave evidence. The respondent company does maintenance work, projects and construction work. Four of the seven employees are electricians. The appellant worked full time at maintenance work in the city centre. He took Wednesdays off, by arrangement. The client store requires a maintenance electrician to be on the premises. It was decided to take the appellant out of the city centre location for a few weeks to get the other guy up to speed. There was no issue with the contract.

When the appellant went to the job in Coolock his colleague explained to him what needed to be done. The appellant was to take over the job from his colleague and complete it with the assistance of an apprentice. The contracts manager told the appellant about the situation in the city centre.

The contracts manager denied that the appellant was waiting for a phone call from him. The contracts manager told the appellant what to do on Friday. On Monday the apprentice phoned the contracts manager and told him that the appellant was not there. The contracts manager could not contact the appellant. The appellant's colleague was returned to the Coolock job on Tuesday. The contracts manager tried to phone the appellant but his phone never rang. The contracts manager did not phone the appellant and hang up. The appellant did not have a landline. The contracts manager did not consider writing to the appellant at that stage.

The decision to send the appellant to Coolock was made by the contracts manager together with the managing director. When the appellant moved his position in the city centre was immediately filled by one of his colleagues. The contracts manager was satisfied that he had explained to the appellant that the move. The contracts manager was satisfied that the appellant was happy enough with the move.

A colleague of the appellant gave evidence. He is a qualified electrician. He had started the job in Coolock. On the Thursday the appellant came out he went through what had been done on site and what remained to be done. The colleague of the appellant told the appellant that there was 4 weeks work left.

The apprentice electrician gave evidence. He was fixing lights when the appellant arrived on the job in Coolock. There was 4 weeks work left for an electrician then. The appellant was shown what needed to be done. When the appellant did not turn up on Monday he phoned the managing director and the contracts manager.

The administrator gave evidence. She deals with time sheets and absences for all staff. She knew

the appellant had not turn in on the Monday because the managing director asked her if he had phoned in sick.

On 1st October 09 the appellant phoned her and told her where he wanted his p.45 sent. She did not ask him for the address, she had his address on file, but the appellant wanted the p.45 sent to a different address.

Determination

The Tribunal carefully considered the evidence adduced. According to the Redundancy Payments Acts, a person who is dismissed, is dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to –

- (a) the fact that his employer has ceased or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or intends to cease, to carry on that business in the place where the employee was so employed, or*
- (b) the fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish, or*
- (c) the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employee has been employed (or had been doing before his dismissal) to be done by another employee or otherwise*

The Tribunal is satisfied that the appellant in this case was not dismissed for any of the reasons listed above. The Tribunal finds that a redundancy situation did not exist. Therefore the appeal under the Redundancy Payments Acts fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)