EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:	CASE NO.
EMPLOYEE	RP1443/2010

against

EMPLOYER
under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. D. Hegarty
Mr. J. Flavin

heard this appeal in Clonakilty on 13 December 2010

Representation:

_____

Appellant(s):
No legal or trade union representation

Respondent(s):
Mr. John Boylan, McNulty Boylan & Partners, Solicitors,
Clarke's Bridge House, Hanover Street, Cork

The decision of the Tribunal was as follows:-

The appellant, a plasterer who was born in 1942, lodged his appeal with the Tribunal on 14 April 2010 stating that his employment, which had commenced on 20 February 1994, had ended on 23 December 2008. His gross weekly pay was €548.00.

The appeal form stated that the appellant had been laid off in December 2008 and had been told by his employer that he would be brought back at a later date when more work became available. After working for the respondent since 1994 the appellant understood that, if he was being made redundant, that he should have been given six weeks' notice but this was not done. He had sent RP9 and RP50 forms to the respondent but had been totally ignored.

The appellant felt that he had made every effort to be reasonable and waited to be brought back to work but now believed that this had been a delaying tactic used by his employer in order to renege on its responsibility to pay redundancy. The appellant believed that his employer had taken advantage of his age, loyalty and trust (in delaying paying the redundancy) in the hope of avoiding payment.

The appeal form stated that the remedy sought was full payment of redundancy due.

The written defence lodged by the respondent was that the appellant had not been made redundant and furthermore that the redundancy appeal was out of time because the appellant's employment had ended on 23 December 2008 and the appeal had not been lodged with the Tribunal until 14 April 2010.

At the Tribunal hearing it was submitted for the appellant that the appellant was told that he would be brought back in the summer of 2009. It was submitted for the respondent that there had been a discussion on 5 December 2008, that the appellant had been made redundant (but had received no RP50 form) and that there had been an amicable parting of the ways.

The appellant took the oath at the hearing and, on being asked about 5 December 2008, said that he had been told that he had to be let go due to lack of work but that he would be taken back the following summer. Asked at the hearing if the respondent had used the word redundant, the appellant replied that the respondent had said that it would have to let him go. The appellant agreed when it was put to him that he had been just laid off.

Under cross-examination the appellant said that he had not got social welfare but had got old age pension. He had had jobs that he was going to do. He had been in the process of building a house. He and the respondent had never fallen out. He had been sixty-six years of age. The respondent had said that it would have work in the summer. The appellant received a P45 with the date of 23 December 2008.

The appellant's son (hereafter referred to as AS) stated to the Tribunal that he had sent the RP9 and RP50 forms to the respondent, that he had used registered post and that he could give sworn testimony if necessary. When the respondent's representative stated that these had been sent much later AS replied that the delay had been to give the respondent time to respond.

The appellant did not deny that he was in receipt of old age pension and construction industry pension but said that he had not received a contract of employment. Asked if the respondent had ever mentioned a retirement age, he relied that he had never been told that he would retire at a certain age.

AS stated that a P45 can be for welfare purposes and that one could seek redundancy after that.

Giving sworn testimony, the respondent's principal (hereafter referred to as LOD) confirmed that he had spoken to the appellant on 5 December 2008 and that he had been aware of the appellant's circumstances regarding pension entitlement. Work had been very tight. It did not look good. He had not been able to give the appellant a date for more work because it was not there. He gave the appellant no assurance that there would be work in the summer.

Asked about the fact that the respondent's written defence had stated that there had been no

redundancy and that it had been stated on the respondent's behalf (by the respondent's representative) at the Tribunal hearing that the appellant had in fact been redundant, LOD replied that the respondent had not stated that the appellant had been redundant. When it was put to LOD that it was up to the respondent to know these things he replied that this had been his "first time it cropped up". When he was asked if he had spoken to an accountant he replied that he had not.

The respondent's representative submitted that the appellant had two pensions. AS countered that the amount was "so miserable it's irrelevant".

Questioned by the Tribunal, LOD stated that he had had some seven or eight employees at the time in question but that this had been the first retirement that he had encountered. All of his employees were in the construction industry pension scheme. He had let others go. They had not been over sixty-five. They did not have two years' service. Others emigrated. Asked if he would have given the appellant redundancy if the appellant had been under sixty-five, he replied that he had felt that the appellant "had a cushion".

AS told the Tribunal that he knew it was late but that the appellant had wanted to go back to work and had waited for the call. If the appellant had got redundancy he would not have got work from the respondent.

Determination:

Having carefully considered the evidence adduced, the Tribunal is unanimous in finding that it was not established that there was reasonable cause for the Tribunal to extend the appellant's time for bringing a redundancy appeal beyond twelve months from the date of termination of his employment. The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)