

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP1579/2010

- appellant

against

EMPLOYER

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr D. Moore
Mr O. Nulty

heard this appeal at Drogheda on 4th May 2011

Representation:

Appellant(s) : Ms. Emma Coffey, Smyth & Son, Solicitors, 30 Magdalene Street, Drogheda,
Co. Louth

Respondent(s) : Mr. Pdraig Lyons BL instructed by:
Mr Kieran Quigley, Branigan Berkery, Solicitors, 29 Laurence Street, Drogheda,
Co. Louth

The decision of the Tribunal was as follows:-

At the outset there was a conflict concerning the start date of the appellant and whether he had the required 2 years service to take an appeal under the Redundancy Payments Acts, 1967 to 2007.

Appellant's Case:

The appellant gave evidence. He had previously been employed by another security company but was let go just before Christmas and signed on for unemployment benefit. Having rang a friend of his (the Uncle of the owner of the respondent business) concerning employment he received a return call with the offer of a job.

He commenced employment with the respondent on January 16th 2008 on a 24-hour shift and signed off unemployment benefit on January 18th 2008. He said that he was sure of the date he had signed off from collecting unemployment benefit that day and had double-checked the date with the local labour exchange.

He was employed by the respondent as a Security Guard working on various vacant new housing sites in Dublin. On February 8th 2010 he received a call from a female in head office informing him

that 2 of the respondent's sites were gone. He asked was his job gone and was told no and to turn up for work the following day as some one from Fingal County Council would meet him to pick up the keys to the site.

On February 9th 2010 around 1.10 p.m. He met the person from Fingal County Council and handed over the keys. He rang head office, spoke to a female member of staff and informed her he had handed over the keys. He asked was he finished up, she replied yes and was sorry.

About 2 months after he was let go he met a friend and former colleague who asked him had he received all monies owed to him. He also asked how much service he had with the respondent and informed him as he has 2 years he was entitled to a redundancy payment. The claimant went and got advice who informed him he should complete an RP9 form and sent it to the respondent. After some weeks he rang the respondent and asked if he was signing the form. He replied that he was not filling in the form, told to f**k off and not to ring that number again.

On cross-examination he said he had contacted the respondent's uncle in early January 2008 for a job. A printout of the appellant's payroll details were put to the appellant. It stated that his first payment of wages was dated February 21st 2008. When asked he stated that he was aware the respondent had a detailed payroll system but he was sure of the date he commenced employment with the respondent.

A letter dated January 22nd 2010 was shown to the appellant informing all security staff that they were on protective notice due to lack of work. He stated he had never seen the letter before. When asked he said that he received his wages, by cheque, from the mobile driver or from the respondent's Aunt. When asked he said that he had only met another colleague (ST) on one occasion. He said he was shocked to hear he had lost his job. He had not been offered alternative employment by the respondent. He was not sure when he had received his final wages but recalled it had been given to him in Drogheda by the respondent's Aunt.

When asked by the Tribunal he said that he did not think the respondent's Aunt or Uncle were involved in the business but it was not unusual for the respondent's Aunt to give him his wages. He told the Tribunal that he had only met ST on one previous occasion when he had driven from his site, which he locked up, and went to ST's site as he, ST, was having difficulties.

Respondent's Case:

The owner of the respondent business gave evidence. The respondent business was engaged in security patrol for empty sites. At the time the respondent had 9 sites with 15 staff. Business was supplied by Fingal County Council. He explained to the Tribunal that a staff member looked after the payroll system and he did not doubt the information submitted of the appellant's payroll records.

On January 22nd 2010 a letter informing staff they were on protective notice due to the lack of work was issued to all staff. The appellant was handed his in the presence of ST, in the van, and advised of alternative employment in Ballymun due to his length of service. He was told that at first he would be transported to and from the site but he would then have to make his own travel arrangements. The appellant said, "There was no hope of his going to Ballymun".

On February 8th 2010 he was informed that Fingal County Council were taking over a number of sites. On February 11th 2010 all staff attended to collect their final wages. The appellant picked up his wages and was again offered alternative employment. He said that he had not used abusive language towards the appellant.

On cross-examination he could not say if the respondent had already acquired the Ballymun contract on January 22nd 2010. He explained that he and his brother were the mobile drivers and pick up and bring staff to and from sites. There was nothing in writing of the offer of alternative employment. He explained that no hand in the running of the payroll system.

When asked by the Tribunal he said that he now had 6 employees. No other staff were entitled to a redundancy payment at the time the appellant was let go.

A former colleague (ST) gave evidence. He commenced employment in September / October 2008 and is still employed by the respondent. He had met the appellant on a number of occasions while getting a lift to various sites but did not know him very well. On January 22nd 2010 he was picked up by the respondent in the van. The respondent told him that all staff were being put on protective notice but he was told that because of his length of service he would keep him on for the Ballymun site but would have to arrange his own transport. They picked up the appellant who got into the back of the van. The respondent told him the same details of protective notice and the alternative position. He could not say what the appellant's reaction was.

Determination:

Having heard the evidence adduced by both parties in this case the Tribunal finds was dismissed by reason of redundancy.

The Tribunal awards a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of birth:	09 July 1956
Date employment commenced:	16 January 2008
Date employment ceased:	09 February 2010
Gross weekly pay:	€ 476.42

This award is made subject to the appellant 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)