

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE

CASE NO.  
RP1542/2010

against

EMPLOYER  
under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. A. Taaffe

Members: Mr. T.P. Flood  
Mr. M. O'Reilly

heard this appeal in Dublin on 6 May 2011

Representation:

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Appellant(s):  
No legal or trade union representation

Respondent(s):  
No legal representation

The decision of the Tribunal was as follows:-

The claim

In April 2010 the appellant, a bricklayer, lodged a claim form with the Tribunal stating that he had been employed by the respondent from July 2007 to January 2010 but that on 2 January 2011 he had received a letter stating that he was being laid off due to a lack of work. On 14 January he received his P45 in the post. He was still owed two weeks' unpaid wages from the respondent. His texts and phonecalls went unanswered. The relationship between the appellant and his employer, which had been good, had completely broken down. From March 2009 he had been constantly owed wages. The appellant sought a redundancy award from the Tribunal.

The defence

In October 2010 the respondent lodged a statement with the Tribunal disputing the appellant's claim to a redundancy award. The respondent denied that there were any wages still owed to the appellant. The respondent was an exterior conservation company which had work stopped by weather in early January 2010. The respondent was to start the restoration of the façade of a major

Dublin building (PSS) on 18 January 2010.

On 14 January 2010 JM (a director of the respondent) phoned the appellant and suggested that they meet. They duly met on 14 January and the appellant said that he did not want to work for the respondent. The appellant stated that he would be better off on the dole (getting 326 euro per week with rent allowance) and that he could obtain a few cash jobs. The appellant then left the respondent's employment. The respondent issued the appellant's P45 by post on 14 January 2010.

On 18 January 2010 the respondent started the PSS project without the appellant. The issue of redundancy did not arise as the appellant had left the respondent of his own accord.

### The hearing

Giving sworn testimony at the Tribunal hearing, the appellant said that at Xmas 2009 the respondent owed him five weeks' wages. He had to ring on Xmas Eve for money. The relationship was gone at that stage. (Since March 2009 he had been constantly owed money. He got his wages in June 2010.) JM decided to let him go. He got a P45 sent out in the post on 14 January 2010.

At the Tribunal hearing the appellant was referred to a letter to him dated 7 January 2010 from JM of the respondent. This letter stated that "because of lack of work" the respondent had laid off the appellant as from 2 January 2010.

JM stated that there had been little work for three or four weeks before Xmas 2009. On 2 January 2010 JM phoned the appellant. The appellant phoned JM on 7 January 2010 and said that he wanted to collect the labour.

The appellant denied that he had called to JM's house, asked for the 7 January letter and had it handed to him. He said that the said letter had been sent to him in the post.

JM stated that on 14 January 2010 the appellant had rung him and that the appellant had got a P45 in the post. The appellant denied having called to JM's house on 14 January 2010 and said that he did not think there had been a letter with the P45.

Giving testimony after making a formal affirmation to tell the truth, JM said that contractors had failed to pay the respondent and that the respondent ran short of money to the extent that JM withdrew his pension to keep the respondent going. The weather was very bad in 2009. JM paid men to do a few hours. He did not want to lay men off before Xmas. In December 2009 the respondent could not work due to weather. On 2 January 2010 JM had no work. On 7 January 2010 the appellant said that he wanted a letter. That was why the appellant now had the 7 January 2010 letter. They had met at about 5.30 p.m. on that day.

On 14 January 2010 the weather looked better for starting work on Monday 18 January 2010. JM owed the appellant money. The appellant called to him in the early afternoon, said he wanted to leave and said that he would not work for the respondent again. There was no-one else present. JM sent a letter for the revenue commissioners' online service and for the appellant. The respondent returned to work on 18 January 2010 without the appellant.

JM told the Tribunal that the appellant had been annoyed and had been right to be annoyed.

In a closing statement to the Tribunal the appellant said that his relationship with the respondent had been fine until March 2009 but that he could not accept hearing that he “might get wages next week”. His family relied on his wages. For two years the respondent had been fine. He never missed a day nor was late. He was a good timekeeper. He stated that around June 2010 he had been paid all the wages that he had been owed by the respondent.

JM said to the Tribunal in a final statement that all had been very good and that the appellant had been an excellent worker but that the respondent had got into genuine difficulty. The company had been owed 250 thousand euro at that time and was still owed 160 thousand euro. The respondent had ceased trading. However, JM insisted that the appellant had left of his own initiative and had mentioned that he could get 326 euro away from the respondent.

**Determination:**

Having considered the testimony in this case, the Tribunal finds that the appellant left the respondent’s employment himself. The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)