

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
RP2316/2010,MN1670/2010

against

EMPLOYER
Under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr D. Hegarty
Mr D. McEvoy

heard this appeal at Cork on 19th May 2011

Representation:

Appellant : In person

Respondent : No representation listed

The decision of the Tribunal was as follows:

Respondent's Case

The managing director maintained that he issued and sent the appellant's P45 to him in early January 2010. However, that document was not addressed to the appellant's residence but to that of his parents who lived in another county. The purpose of that issue was to formally end the employment relationship the company had with the appellant. The managing director told the Tribunal that the appellant was aware that the job he was engaged on up to December 2009 was finishing. While that was never formally communicated to the appellant by the respondent the managing director was certain that an employee of another company informed the appellant of that news.

Responding to the appellant's request for a letter to the social welfare authorities the managing director wrote the following on 12 January 2010:

I confirm that X (the appellant) was temporarily laid off by Y (the respondent) due to the slowdown in the construction industry, on Friday 18 December 2009.

The following month the respondent supplied the Revenue Commissioners with its P35L list for the year ended 31 December 2009. That list indicated that the appellant ceased employment with the

respondent by that date. The managing director contended that the appellant did not have the appropriate service to entitle him for a redundancy payment. By early July 2010 the managing director responded to a second request to issue the appellant with his P45.

Appellant's Case

The appellant commenced employment with respondent in May 2008 and undertook work for a contractor on behalf of the company. That work came to a seasonal halt on 21 December 2009 and a foreman from the contractor told him that there was no more work. It was his impression that work would recommence in springtime when conditions allowed. At no stage did either the respondent or the contractor explicitly inform him he was either facing lay-off or being let go. However, in November 2009 the appellant accepted that the respondent advised him that the company had no further work for him once the contract job finished. He then phoned the managing director and sought a letter on his status. The appellant said he did not ask that director to include any specific wording for that letter.

By early July 2010 the appellant accepted employment from another entity and needed his P45 from the respondent. That document was sent and received at his own address. This was the first and only P45 he sought and received.

Determination

Notwithstanding the conflicting evidence in this case the Tribunal cannot ignore the respondent's letter, dated 12 January 2010. The wording is clear and unambiguous in that letter. The respondent seemed to tell Revenue one thing about the appellant while stating something elseto the social welfare authorities. Apart from the contents and circumstances of that letter it is accepted that the respondent never formally communicated to the appellant the status of his employment during his time with company. Evidence was also given that the respondent did not furnish the appellant with his written terms and conditions of employment.

Having considered the adduced evidence and documentation on this case the Tribunal finds that the appellant's employment with the respondent was terminated by way of redundancy. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 is allowed and the appellant is awarded a statutory lump sum under those Acts, and based on the following:

Date of Birth: 08 January 1979
Date of Commencement : 19 May 2008
Date of Termination: 02 July 2010
Non-Reckonable Service: 18 December 2009 to 2 July 2010
Gross Weekly Wage: €524.98

This award is made subject to the appellant having been in insurable employment during the relevant period in accordance with the Social Welfare Acts.

While on lay-off the appellant effectively informed the respondent he was ceasing his employment with the company. Since the respondent did not actually terminate the appellant's employment

It follows that it was not required to give him notice of that termination in those circumstances. Accordingly, the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 cannot succeed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

