

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
RP900/2010

Against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Letterkenny on 19th May 2011
and 26th July 2011

Representation:

Appellant: Mr Kevin McElhinney, Gibson & Associates, Solicitors, Port Road, Letterkenny, Co Donegal

Respondent: Daragh McLaughlin C.S. Kelly & Co, Solicitors, Market House, Buncrana, Co. Donegal

The decision of the Tribunal was as follows:-

The appellant's employment terminated on the 29th March 2008, he lodged his claim for redundancy with the Tribunal on the on the 11th February 2010. The respondent's representative objected to the appeal under the Redundancy Payments Acts 1967 to 2007 was statue barred as the appeal was not referred to the Tribunal within the 52 week period as set out in the above Acts. The Tribunal have discretion to extend the time to 104 weeks if there is reasonable cause. The Appellant's representative explained that that there was reasonable cause in this case as the claimant had submitted his claim to the appointed examiner through another party. When his ex-colleagues received their statutory redundancy the appellant had tried to obtain his payment from the examiner but to no avail, hence the 52 week period had expired.

The respondent's representative explained that the former owners had an examiner appointed through the High Court and all creditors were invited to put in claims against the company through this examiner. His clients had purchased the business afterwards on the basis it was free of all debts and it would be unfair if his clients had to make a redundancy payment to the appellant.

At this juncture the Tribunal decided to adjourn this hearing to a later date to allow the parties to seek advice from the Department responsible for making statutory redundancies payments.

On the second day of the hearing the respondent's representative referred the Tribunal to the High Court scheme of arrangements in respect of the examiner being appointed and specifically to the arrangements for employees. Under these arrangements the current owner had to pay the state 20%

of monies due to the former employees. The appellant's representative explained that through no fault of his own the appellant had not received his statutory redundancy.

The appellant gave direct sworn evidence. He had worked since 1975 and in March 2008 the premises were closed as result of Gardaí operation. One of his former colleagues (MK) provided him with a RP50 which the appellant completed. MK delivered the appellant's RP50 along with his own to the examiner's office.

MK gave direct sworn evidence on behalf of the appellant. He confirmed that he had delivered his and the appellants RP50 to the examiner's office about two weeks after the closure of the business. He received contact from the Department in the following October and received his redundancy payment in November.

The appellant's representative explained that any attempt to contact the examiner have failed as the examiner is not returning his calls.

Determination

The respondent's defence to this claim was that the current owners purchased the respondent in good faith and without notice of any claim by the appellant. They contend that the claim should have been notified to the examiner during the period of examinership, and because this was not done the appellant's claim cannot succeed. However according to the appellant he submitted his RP50 to the examiner.

The appointment of an examiner to a company is accomplished under the provisions of the Companies (Amendment) Act, 1990. The appointment of an examiner to a company does not operate as a notice of discharge to employees of a company and it seems that the existing employees' statutory rights are preserved during an examinership.

In the absence of any contrary provision in the Redundancy Payments Acts 1967 to 2007 it appears to the Tribunal that the appellant was entitled to make the claim notwithstanding the period of protection granted by the examinership.

The Tribunal therefore finds that the claimant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of birth	4 th January 1949
Date employment commenced	1 st January 1975
Date employment ceased	29 th March 2008
Gross weekly pay	€221.38

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)