

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

EMPLOYEE - *appellant*

CASE NO.

MN1407/2010

RP1974/2010

against

EMPLOYER - *respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Fahy BL

Members: Mr. W. O'Carroll
Ms H. Henry

heard this appeal at Galway on 18th November 2011

Representation:

Appellant(s) : In person

Respondent(s) : Ms. Orlaith Keyes BL instructed by Feeney, Solicitors, 1st Floor, Lismoyle House, Merchants Road, Galway

Appellant's Case

The appellant gave evidence that he worked for the respondent company since September 2006. He was employed as a mechanic and car valet attendant. He was living in rented accommodation provided by the respondent. On 16 January 2010 he had a dispute with his employer concerning the payment of rent in his accommodation. As a result he wanted to move out of the accommodation provided to him by his employer. He was told by his employer that if he moved out of the accommodation he would no longer have a job. He subsequently received a telephone call informing him to come and collect his P45. He was told that if he did not sign documentation he would not receive his P45. He signed the documentation and was given his P45. He confirmed to the Tribunal that he was offered his job back by the respondent but he did not wish to return to work for the respondent because of the way he was treated. He has been unemployed since his dismissal and does not know if he was replaced in his employment by the respondent.

Respondent's Case

Witness for the respondent gave evidence that he is employed as the respondent's financial controller. He gave evidence that the appellant left his employment on 16 January 2010. The appellant was one of a number of non-nationals employed by the respondent and it was not unusual for those employees to leave their employment for a period of time and return at a later stage. The appellant's position was left open for him as it was assumed that he would be returning to his employment. The company did not contact the appellant between January 2010 and May 2010. The appellant then called to the respondent's premises in May 2010 seeking redundancy. The witness informed him that he had not been made redundant and the respondent had work available for him. The appellant was offered employment in May 2010 and the respondent is still in a position to offer him employment.

Determination

The Tribunal having heard the evidence of both parties determines that the appellant has failed to show that a real and genuine redundancy situation existed. On 16 January 2010 there was a dispute between the appellant and the respondent relating to the payment of rent in respect of accommodation provided by the respondent. It was the appellant's case that, following the non-resolution of this matter he was told that his employment was being terminated and he left his place of employment. This was not disputed by the respondent. The appellant believed that he had been made redundant however the Tribunal is satisfied that his job was available to him at all times notwithstanding the dispute of 16 January 2010.

In all the circumstances the Tribunal finds that the claims under the Redundancy Payments Acts 1967 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005 fail and are hereby dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

