

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE (*appellant*)

RP2020/2010

Against

EMPLOYER (*respondent*)

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes

Members: Mr F. Moloney
Mr. P. Woods

heard this appeal at Dublin on 10th May 2011

Representation:

Appellant(s) :

Ms Iwona Rozek, Tallaght Enterprise Centre, Main Road,
Tallaght, Dublin 24

Respondent(s) :

In person

The decision of the Tribunal was as follows:

Claimant's case

The claimant started working for the respondent, an employment agency, on 1st May 2007. The company she was assigned to work for, from the employment agency, told her she was no longer needed on 14th January 2010. She rang the respondent and reported to the administration section what had happened. The following day the respondent company offered the claimant a job elsewhere but, as it was a cold location, the claimant turned it down as she had been unwell. It was a two-week temporary offer. She requested her P45, as she needed this for Social Welfare support. The claimant was waiting for her P45 for six to seven weeks.

Under cross-examination, the claimant stated that she was not aware that she was on a temporary contract of employment. The claimant did not have copies of any documents she signed and did

not know what she had signed. The claimant remembered being appraised by the company she had been assigned to but did not re-call any negative feedback. She understood the appraisal documents to be about targets and not criticism. Referring to a follow up review in November 2009, the respondent stated that it showed the company were still not happy with the claimant's performance regarding pick rate and accuracy. The claimant explained that the packages were very heavy and that she was still doing her work very well.

In reply to the Tribunal asking the relevance of this line of questioning, the respondent stated that the company the claimant had been assigned to, decided they no longer wished to employ her. The claimant was then paid two weeks notice.

The claimant confirmed she was subsequently offered another job by the employment agency. She said the company that had let her go, knew she had been sick. The claimant informed the employment agency she was unwell and was told to bring extra clothes for the new job. The respondent already had 200 employees working in the warehouse and had no problems from staff regarding the nature of the work. The claimant confirmed that she had one job offer from the employment agency. She also confirmed that she had requested her P45.

In reply to the Tribunal, the claimant stated that the reason given for being let go was because she had made mistakes. The claimant was paid her wages and holiday pay from the employment agency.

The respondent informed the Tribunal that the claimant had received a private payment from the company she had been assigned to. The claimant stated that even if they had paid her money, it would be confidential. She denied a private payment had been received by her from the company she had been assigned to.

The claimant has not worked since the end of her employment with the respondent.

Respondent's case

A representative from the employment agency gave evidence stating that the company appoint staff on a temporary basis. The respondent company did not know how long the claimant's assignment would last. Her employment was terminated because there had been no improvement in her accuracy. The claimant did not put forward any argument that her assessments were unfair.

The claimant was offered the next suitable position in a similar warehouse and she refused the job offer. It was January at that time and it was cold. All staff were told to wear extra clothes. The work was not freezer based. The warehouse would be ten to twelve degrees in the winter and was unheated. The respondent was not aware of any health problems on the part of the claimant. There was no record on the company database in relation to any complaints by the claimant.

A Rights Commissioner case under Terms of Employment was paid in full in the amount of €1,000. The unfair dismissal case before the Rights Commissioner was withdrawn against the company the claimant had been assigned to. The respondent stated that a settlement had been agreed in that case.

The respondent was not asked to replace the claimant by the company in question.

Determination

The respondent is an employment agency. A large part of the business is the placing of employees in warehousing jobs. The claimant was employed by D Ltd as a general warehouse operative. She had been interviewed by the respondent and was registered with them on 30th April 2007. The following day she was placed with D Ltd. This employment continued until the 14th January 2010. That morning she was informed by her manager that she was no longer needed. She telephoned the respondent. Later that same day the respondent telephoned her back and offered her a placement with T Ltd. She declined the placement as it was only for two weeks. She also told the Tribunal that she was too ill at the time and could not work with T Ltd due to the cold conditions. No other offers were forthcoming and on 15th February 2010 she asked for her P45. She told the Tribunal that she wanted a P45 so that she could apply for Social Welfare. However, she accepted in cross-examination that she had told the respondent that she wanted her P45 because she intended to look for her own position.

The claimant was at all times paid by the respondent and was therefore an employee of the respondent within the meaning of the Redundancy Payments Acts. The Tribunal is satisfied that she was offered alternative employment after she was no longer required by D Ltd. This offer was refused. The Tribunal is satisfied that this alternative employment was broadly similar to the one that she had with D Ltd. It was not in a chilled warehouse, as was suggested by the claimant. The Tribunal is satisfied that the offer was unreasonably refused by the claimant and that she left the respondent's employment voluntarily. The Tribunal is satisfied that she was not dismissed by reason of redundancy and, accordingly, her claim pursuant to the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)