

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP743/2011

against

EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Mr. P. Casey
Ms. H. Kelleher

heard this appeal in Cork on 21 November 2011

Representation:

Appellant(s):

No legal or trade union representation

Respondent(s):

No legal representation

The decision of the Tribunal was as follows:-

The appellant, an electrician, claimed that his employment, which commenced on 10 April 2006, ended by reason of redundancy on 11 July 2009. His gross weekly pay was €473.36.

The Tribunal was furnished with a copy of a letter dated 1 June 2011 in which Mr. DN of the respondent stated that he had given notice to the appellant but had told the appellant that he would be kept on the books to call him if work came in. However, the letter stated that DN

would not be able to keep the appellant on full-time because the respondent had no work.

The letter went on to say that the appellant subsequently told DN that he had found work with another employer (PE) and that the respondent could take him off its books as he was going to inform FÁS of his change of employment. The letter stated that, as the appellant had gone directly from working for the respondent to PE, DN was not aware that he should pay the appellant a redundancy lump sum. The said letter concluded by saying that the appellant had contacted DN about redundancy a few months previously and that the respondent had checked it out but had been told that it had gone on too long for the respondent to put in for statutory redundancy.

Giving sworn testimony at the Tribunal hearing, the appellant said that he had been let go because there was no work and that MCH of the respondent had told him that he was entitled to redundancy. He had been with the respondent for three years and he had presumed that he would get redundancy but no redundancy form (RP50) had been completed and he was told that there was a five-month waiting list.

The Tribunal was furnished with a copy of a letter dated 18 December 2008 in which DN had given the appellant two weeks' notice due to the economic downturn but the appellant stated to the Tribunal that he did not think that he had been let go at the end of 2008 but that he thought that DN had been able to save his job so that the letter was rescinded. He had worked for the respondent from summer 2006 to summer 2009 and there had been a presumption that he would be brought back but he was never brought back. After three months he got work from PE (a Lismore business).where he continued to be employed.

Giving sworn testimony, MCH (the respondent's office administrator) said that she reported to DN and that DN had given notice in December 2008 but that more work had come in (so that the notice was rescinded). The claimant had come back from FÁS block release in June 2009 but work had gone quiet and DN had said that he would keep the appellant on the books. It was between July 2009 and December 2009 that the appellant had rung looking for redundancy because he had not been called back. MCH was told that it was too late for the appellant to get redundancy. She rang "the Redundancy Board" but was told that the respondent could not claim a rebate. The appellant had rung a couple of months after his departure. She understood that he had found employment with another company subsequently to his employment with the respondent.

MCH said that the respondent was still operating but that the appellant had not worked there since 11 July 2009. DN had said that the appellant was not entitled to redundancy because the appellant was working for another company. The respondent had had no further work for the appellant. She (MCH) did not know whether or not the appellant was entitled to redundancy but she was told that it was too late to apply for a redundancy lump sum rebate and that the appellant would have to go to the Employment Appeals Tribunal. DN had hoped to bring the appellant back to work. She did not know why no lay-off letter appeared to have been given to the appellant.

Determination:

The Tribunal noted that the abovementioned DN did not attend the hearing. The Tribunal was not satisfied that any letter or document had been issued to the appellant to formally put him on lay-off such that he would have had to formally serve notice on the respondent if he wished to claim redundancy. It appeared that the appellant had been let go without any lay-off documentation and that the respondent's unwillingness to make him a redundancy payment was wholly or mainly due to its inability to secure a rebate. In all the circumstances of the case, under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that the appellant is entitled to a redundancy lump sum based on the following details:

Date of birth: 01 July 1988

Date of commencement: 10 April 2006

Date of termination: 11 July 2009

Gross weekly pay: €473.36

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)

