

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *appellant No 1*

RP2664/2010

EMPLOYEE – *appellant No 2*

RP2665/2010
WT866/2010

against

EMPLOYER- *respondent*

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr J. Browne
Ms S. Kelly

heard this appeal in Abbeyleix on 29th August and on the 3rd November 2011

Representation:

Appellant(s): Patrick J. O'Meara & Co., Solicitors, Liberty Square,
Thurles, Co. Tipperary

Respondent(s): Mr. Robert White, Bolger White Egan & Flanagan, Solicitors,
8 Lismard Court, Portlaoise, Co. Laois.

Appellant's Case

Appellant No 1 (PD) gave evidence that he commenced working for the respondent in March 2000. He worked continuously until February 2010 when he was told by the respondent that there was no more work for him. He signed an RP50 form and he was told by the respondent he would be paid his redundancy money when he (the respondent) received the redundancy rebate from the

Department as he did not have the money to pay him his redundancy at the time. He was told that payment would take 9/10 months. He never received his redundancy money; he never met the respondent's accountant and was never paid any cash. He did not sign any document stating that he had been paid his redundancy money in cash.

Under cross examination he accepted that the respondent had allowed him the use of the work facilities for him to carry out work for his own private duties. He enjoyed a good working relationship with the respondent. He accepted that he had been employed on a 3 day week from 26 September 2008 and he had no difficulty with that position. He had discussions with the respondent in September and December 2009 concerning redundancy and he understood the situation. He signed the RP50 form on 19 February 2010 but did not receive any redundancy payment in cash.

Appellant No 2 (OOR) gave evidence that he commenced working for the respondent in May 1999. He remained in employment until 19 February 2010. From 2008 onwards he worked on a 3 day week basis and he had discussions with the respondent in September 2009 concerning redundancy. At that point he was happy to accept redundancy and told the respondent to go ahead and process his redundancy. The respondent told him in January 2010 that he was processing his redundancy but would be unable to pay him his money until he received the rebate from the department. He signed the RP50 form in the respondent's kitchen in January 2010 but never received a redundancy cash payment. His employment ceased on 19 February 2010 and he requested his P45 and a reference. These were provided to him in April 2010. He received no public holiday entitlements from January 2008 and is owed 18 days in respect of his public holidays.

Under cross examination he accepted that he had the use of the respondent's workshop free of charge for his own use. He accepted that he signed a document dated 8 August 2008 stating that he had been paid his holidays and bank holidays. He signed this document in good faith. He was in receipt of a Social Welfare payment for 2 days per week when he was employed on a 3 day week basis. He denied that he had a meeting with the respondent on 19 February 2010 or 26 February 2010. He signed the RP50 form in January 2010. He never met the respondent's accountant but accepted that he had a phone conversation with him.

Respondent's Case

The respondent's accountant (POR) gave evidence the respondent informed him that he was making the appellants redundant. He met with the appellants and gave them the RP50 forms on 19 February 2010. He discussed the calculations of their redundancy entitlements and the appellants took away the forms. On 26 February 2010, along with the respondent he met with the appellants individually. The respondent paid €4870 to appellant No 1 and €6080 to appellant No 2. These amounts were paid in cash and he witnessed the payment. The appellants signed the forms stating that they had received payment. (POR) told the Tribunal that two customers had paid the respondent cash for works completed and that cash was used to pay the redundancy amounts to the appellants.

Under cross examination (POR) said the cash was not lodged into the respondents bank account.

The respondent (DOR) told the Tribunal he employed up to thirty employees over the years in his workshop producing kitchens and wardrobes. He said he currently has enough work to keep himself going. He said he had reduced the appellants work to three days and after a discussion with (POR) he decided to make the appellants redundant.

On the 19th February 2010, he met with (POR) and the appellants. (POR) went through the forms with the appellants and the appellants were given a week to come back to him. On the 26th February, he met with the appellants individually; they signed the forms and were given their payments. There was no argument whatsoever from the appellants and he did not hear from them until (PD) called to him looking for hinges two months later.

Under cross examination (DOR) said he didn't know anything about redundancy calculations and (POR) looked after that. He said both appellants were at the meetings on the 19th and 26th February and they signed both documents. He said if the appellants had wished to contact him, they have his mobile number, his wife's mobile number, and they knew where he lived. He was also in the workshop nearly every day.

The respondent's wife (SOR) told the Tribunal when the claimants started working their hours were 8:30am to 17:30pm. She said the claimant did not stick to those hours and (DOR) had to introduce a clock-in system. She said (PD) would work late into the evenings in the workshop.

Determination

The Tribunal having carefully considered the evidence adduced at the hearing prefers the evidence of the respondent.

The Tribunal accepts the evidence of the Chartered Accountant tendered and the financial documentation provided and is satisfied that the proper redundancy amounts were paid to each claimant.

Accordingly, the Tribunal by majority decision dismisses the claims under the Redundancy Payments Acts, 1967 to 2007, and the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)