

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – *appellant*

RP1661/2010

against

EMPLOYER – *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. W. O'Carroll
Mr. F. Dorgan

heard this appeal in Limerick on 25th November 2011

Representation:

Appellant: Mr. Gerry Tobin, Limerick Citizens Information Service, 54
Catherine Street, Limerick

Respondent(s) Ms Faya Revington BL instructed by Ms Petra Jurcisinova, Kieran
Mulcahy Solicitors, 70 O'Connell Street, Limerick

The decision of the Tribunal was as follows:-

Appellants Case:

The appellant gave evidence. He worked for the respondent in his garage from 1997 to June 2009 without incident. He took two weeks holidays in June 2009 and on his return, the respondent met him at the gates to the garage and told him there was no work for him and to come back in July. In July he called back to the respondent and was told there was still no work available.

About two months later he received a phone call from the respondent to say there was some

work available. The appellant was receiving unemployment benefit from Social Protection. He worked for three weeks and on the third week he told the respondent "this can't go on" He left and was not paid for the third week worked and did not accept a P45 from the respondent.

The last he heard from the respondent was a phone call. The respondent asked the appellant if he would be available if needed. The appellant said he would be, but heard no more. The appellant then met a person who told him "I heard you gave it in".

Under cross-examination the appellant said he went on his holidays from the 4th to the 18th June. The business was very quiet. When the respondent phoned him, he thought there was only work for a few days and he would not have to sign off the dole. He did not know what jobs the respondent had. During the third week the respondent started to show him another job. He told the respondent he should not be there. He was on social welfare and the respondent had not told him to sign off.

Respondents Case:

The appellant started in 1997. He had never laid the appellant off before July 2009 and knew he had work coming up in August. The appellant was off from the 24th July to the end of August 2009. On the 14th October the respondent arrived back to the garage and found the appellant sitting in his car. The appellant gave him the keys and said "I'm finished" The respondent thought he was annoyed about the spray gun. He told the appellant he had work for him and he did not want him to leave. The appellant told him to do it himself. He said he always treated the appellant as a friend.

That evening he phoned the appellants home and got his voicemail and again phoned in late January 2010. On the 3rd March 2010 the appellant came into the garage and the respondent showed him his new spray painting system. The appellant had a form with him and asked the respondent to fill it in. He took the form from the appellant and later when he looked at it he was stunned to see it was a redundancy claim form.

On the 13th March he met the appellant in his car. He told the appellant he walked out. The appellant said he did not. He said sign the form, it won't cost you any money, there is a fund to pay for it.

On the 1st April the appellant asked him to sign a credit card form. He had the form folded in his hand. When the respondent unfolded the form he noticed it was social welfare claim form. He told the appellant he should not have been claiming social welfare and working. The appellant told him "you are in trouble now; I will say I was working under the counter". The following month the claimant asked him to sign the form again.

The respondent said the appellant walked out on him and he was not aware he was signing on.

Under cross-examination the respondent said he did lay the appellant off, August was quiet. On the 16th October he spoke to a customer who advised him to keep notes. He kept notes from that day and wrote about three books. He made a supplementary P45 to pay the tax and USC for the three weeks to appellant worked.

Mr (AW) gave evidence. He has worked with the respondent on a contract basis since 1999 and he pays the respondent by cheque on a weekly basis. On the 13th October he asked the

appellant to fit a bulb. They both tried to do it but could not. At the end of the week he went to pay the respondent and told him about the light bulb.

Mr. (JE) gave evidence. He has a motor business in Limerick and the respondent is a customer. He said the respondent is a very honest man.

Determination:

The Tribunal having carefully considered the evidence adduced at the hearing prefers the evidence of the respondent. The appellant left the respondent of his own volition and was laid off for a period of three weeks. The position was not redundant and accordingly, the claim under the Redundancy Payments Acts fails

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)