

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE

- *Claimant*

against

EMPLOYER

- *Respondent*

under

CASE NO.

UD1730/2010

RP2324/2010

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr C. Lucey
Mr N. Dowling

heard this claim at Dublin on 10th January 2012

Representation:

Claimant: Mr. Niall Nelligan B.L., Pc Moore & Co, Solicitors, 17 South Great George's Street, Dublin 2

Respondent: Mr. John Barry, Management Support Services (Ireland) Limited, The Courtyard, Hill Street, Dublin 1

The determination of the Tribunal was as follows:-

Claimant's Case

The claimant, AB, told the Tribunal that he did not send a letter of resignation to anyone in management in the respondent company, nor did he speak to anyone in management about resigning.

The claimant worked for the respondent company since 2002 until the respondent lost a large airport contract in June 2008. A transfer of undertakings took place with the new company awarded the contract and the claimant was offered a position with this company because the respondent did not have enough hours of work for the claimant. The claimant did not think he could transfer because of his work permit but the respondent told him they would sort out the problem and he could work for two companies in the interim.

The claimant needed an unlimited permit to transfer with no issues. The claimant did not get a contract of employment with the new company. The claimant subsequently left the employment of the new company because the hours of work did not suit him as the start time was 6am. He requested extra money for the work and they said that they would consider it and let him know.

During this time he continued to work for the respondent on a part time basis. After two weeks with the new company nothing had changed and he had asked to revert to his previous hours of work. The claimant decided not to return to work with the new company.

In April 2009 the claimant was admitted to hospital with pancreatitis. He informed the respondent of the situation and got a letter from them for the purpose of social welfare. The claimant continued on illness benefit for nearly one year. In May 2010 the claimant needed to get a tax certificate for his wife. When he got this document it did not have the respondent listed as his employer. He went to an accountant who told him that it probably meant that he no longer worked for the respondent. He then contacted the respondent directly and they informed him that he finished working with them on 1st May 2009.

The claimant received his P45 in May 2010 which showed a date of cessation as May 2009. The claimant did not receive a P45 in 2009 and the first time he became aware of his dismissal was in May 2010.

The claimant was deemed fit to work in August 2010 and sought to return to work in the respondent company.

During cross examination the claimant told the Tribunal that he started working part time hours for the respondent in September. He worked these hours in a number of places in the airport. The claimant said that he continued to work for the new company for approximately 5-6 weeks.

The claimant did not agree that he had a discussion at any stage with his supervisor about leaving the respondent company because they could not guarantee work.

When the claimant became fit for work he did not contact the respondent because he had received his P45 two months earlier. The claimant's accountant contacted the respondent on his behalf and explained to the claimant that he had not worked there since May 2009. The claimant was not happy because he had not received notice and only got his P45 one year later.

Respondent's Case

The Tribunal heard evidence from TB, the area manager for the respondent, who explained that when the respondent lost the contract for the airport there was no discussion with the claimant about continuing to work part time with the respondent. He did not allocate any hours to the claimant as he was no longer an employee of the respondent.

At the end of the claimant's second week of work with the new company he told TB that he had a problem with his supervisor in relation to his nationality and he was thinking of leaving the new company. The claimant asked TB for some hours of work with the respondent. TB told the claimant that he could give him some hours of relief work but only on a temporary basis because they had lost the contract.

He gave the claimant some cover work for a number of weeks and then someone left the respondent company and he gave some of those hours to the claimant. TB gave the claimant approximately 15hours per week.

On the 24th April the claimant was off work sick. TB received a phone call from the claimant requesting his P45 for Social Welfare so that he could prove that he had finished work.

TB told the Tribunal that when the new company took over the contract it was a TUPE situation and all documents were covered by TUPE. In order to work in the airport the claimant had to hold a valid airport access permit. When the claimant transferred to the new company he never provided the airport police with clearance from the Russian police and as a result he could not get an access permit. When the claimant sought work from the respondent his access permit was out of date and TB asked him to provide the relevant documents to get a valid access permit.

TB told the claimant he could not give him any work until he got the access permit. The claimant did not hold an up to date access permit when he went on sick leave.

During cross examination TB explained that the documents in relation to airport permits are confidential. He was responsible for taking the application form from the claimant and giving it to the airport police to deal with.

TB had a discussion about TUPE with the claimant in September 2008 when the claimant re-applied to the respondent for employment. TB told the Tribunal that the date of June 2008 in the letter to the claimant's solicitor dated 14th July 2010 is incorrect and the transfer took place around September 2008.

TB told the Tribunal that the claimant had received airport clearance from the new company for a period of 3 months. When this period expired clearance became an issue because TB could not give the claimant any hours of work in the airport without clearance and it was at this stage that the claimant sought his P45. TB viewed this request as the claimant dismissing himself from the respondent.

The claimant told the Tribunal that he did not pursue getting clearance at this stage because he was sick.

Determination

There was a huge conflict in the evidence given by both the claimant and the respondent. On balance the Tribunal prefers the evidence given by the respondent and particularly places significance on the fact that the claimant did not contact the employer with a view to establishing his employment status himself.

The claims under the Unfair Dismissals Acts 1977 to 2007 and the Redundancy Payments Acts 1967 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)