

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP306/2011
MN261/2011

against

EMPLOYER

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. D. Hegarty
Mr. O. Wills

heard this case in Cork on 10 October 2011

Representation:

Appellant(s):

Ms. Catherine Kirwan, Finbarr A. Murphy & Co, Solicitors,
Lee White House,
8 Washington Street,
Cork

Respondent(s):

No legal representation

The decision of the Tribunal was as follows:-

A redundancy appeal (and minimum notice claim) was lodged with regard to the appellant's

service as a construction worker with the respondent from 24 September 2004 to 1 July 2010. He finished a job in Limerick with the respondent on 1 July 2010 and thereafter he was laid off and not re-employed. Despite a request for redundancy payment same had not been forthcoming. Furthermore, insufficient notice had been provided. In the alternative the appellant had been unfairly dismissed.

The Defence

The respondent's defence was simply that the appellant's position had not been made redundant.

The Hearing

The appellant's testimony

Giving sworn testimony at the hearing, the appellant stated that he had started work for the respondent in Carrigwohill on 24 September 2004. He also worked at a university campus and for a client of the respondent (SSK) in Mitchelstown. He had an accident in 2007 when he stood on a nail that went through his boots. He went to hospital and had to pay a hundred euro. He was contacted by GD (the respondent's operations manager) and was not pleased with GD's attitude but he did get the hundred euro after ten days. Otherwise he got on fine with the respondent. He never got a contract but the respondent always paid his wages. He had asked the respondent for a contract but his first time to see one was at the Tribunal hearing. When it was put to him that he had had an oral contract his representative said that he had not had his terms and conditions specified.

The appellant contacted CB (a recruitment consultant with the respondent) looking for work but did not receive it. After he got a P45 he applied for redundancy from the respondent. The respondent said that he never answered their calls. The appellant could not get work in Ireland. He went to Switzerland.

The appellant told the Tribunal that in March 2010 he had got a call from CB about ending in

two weeks but that he had then, an hour later, got a call to work for the respondent. He went on holidays expecting to have another job with the respondent when he came back.

The appellant's representative said that only redundancy and minimum notice awards were sought from the Tribunal (rather than awards under other legislation).

It was conceded that the respondent's construction work had been decimated. The appellant said that he had sent a "Form 12 A" to claim redundancy but that he had only received a P45, that he had then left Ireland and was working in Switzerland. He had sent the form to claim redundancy and, around the end of October 2010, he had gone to Switzerland. He had stayed in Ireland from July 2010 to October 2010.

The Tribunal was furnished with a letter dated 17 November 2010 from GD to the appellant which said that the appellant was not entitled to a redundancy payment and that the respondent was only too happy to find him a position. The letter added that the appellant had last worked on 1 July 2010 when he had informed CB that he was going on holiday and would contact CB on his return but that the appellant had not contacted CB or anyone else in the respondent and that, despite both CB and GD phoning the appellant at least three times, the appellant had not taken or returned the calls. When the Tribunal asked if there had been any reply to the said letter the appellant's representative said that there had been none apart from the Form T1A sent to the Tribunal.

The appellant accepted that CB had rung him about Fermoy work but the appellant said that it was no longer on offer by the time CB rang him and that he (the appellant) had never refused any job. When it was put to him that he had not taken calls from CB the appellant denied this and said that CB had said that he would call the appellant.

The respondent's testimony

Giving sworn testimony at the hearing, GD (the respondent's abovementioned operations manager) said that the respondent was an agency which supplied construction workers to

construction companies. Workers would then be supervised by the respondent's clients who would decide for how long they would need workers. GD had interviewed the appellant. In 2006 and 2007 the respondent could move a worker to another client as soon as the previous client ceased to need him. Later, it could take up to three weeks. The appellant was a long-term employee of the respondent. He was reliable.

GD told the Tribunal that the respondent had paid about two hundred and fifty thousand euro for redundancy but not when people did not want to work for the respondent. GD had rung cx who had never taken a call from GD. CB (the respondent's abovementioned recruitment consultant) who worked for GD and reported to GD did speak to the appellant.

GD added that "guys" would be happy to get redundancy and go abroad. He believed that the appellant did not want to work for the respondent.

Asked about the appellant's contract, GD said that MM of the respondent had furnished it to the appellant. GD, accepting that the appellant's signature was not on it, said that it had been posted to the appellant's address and that this was standard respondent procedure.

Regarding attempts made to contact the appellant, GD said that, after numerous phone calls and foreign ring tones, a P45 was posted out. Questioned about this at the hearing, GD said that he had no written proof in relation to phone calls and that he had not brought an XL sheet because the Tribunal had not previously wanted to see one.

GD told the Tribunal that there was less work but not a redundancy situation. The respondent continued to have employees. He had rung the appellant twice and CB had also rung him only to be told that the appellant did not want work unless it was long-term. The respondent would keep the better workers like the appellant. Any employee of five or six years was a long-term employee for the respondent. The respondent still had about seventy-five employees with construction clients. He could put the appellant in a job the next week.

GD stated that CB was no longer with the respondent.

Determination:

On the evidence given the Tribunal was satisfied that there was a right of redundancy and that the respondent did not deal with it satisfactorily. The Tribunal makes a finding under the Redundancy Payments Acts, 1967 to 2007, that the appellant is entitled to a redundancy lump sum based on the following:

Date of birth:	17 October 1980
Date of commencement:	24 September 2004
Date of termination:	01 July 2010
Gross weekly pay:	€660.27

Payments from the Social Insurance Fund are subject to a statutory ceiling of €600.00 per week.

All redundancy awards are subject to the employee having been in insurable employment under the Social Welfare Consolidation Acts.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails because the Tribunal was not satisfied that the respondent was in breach of the said minimum notice legislation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)