

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE – *appellant*

CASE NOS.
RP1145/2011
MN951/2011

against

EMPLOYER – *respondent*

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: Ms N. O’Carroll - Kelly B.L.
Members: Mr R. Prole
Mr J. Dorney

heard this appeal at Carlow on 11th May 2012

Representation:

Appellant: Ms Joanna Kwiatkowska, 2 Doirin Alainn, Ballylynan, Co. Loais

Respondent: Mr Gerald O’Donnell of Smyth O’Brien Hegarty Solicitors,
24 Lower Abbey Street, Dublin 1

The determination of the Tribunal is as follows:

Appellant’s Case

The appellant went to a meeting on 25 February 2011 and was asked for a date on which he would return to work. He said that it depended on him being certified fit to work. There was a follow up meeting on 4 March 2011. The appellant did not resign from his job. He was awaiting surgery and hoped to return to work as soon as he was certified medically fit. The appellant expected to be set up with an appointment to see the respondent’s medical advisor but instead he received his p.45.

The appellant did ask the quality supervisor if he would be entitled to a redundancy payment if his employment ended. She told him that redundancy was not possible.

The appellant’s son gave evidence that he had attended both meetings with his father. His father did not resign from work. After the meetings, his father expected to receive an appointment with the company doctor to see if he could return to work.

Respondent's Case

The site manager gave evidence. The appellant was asked to attend a meeting to discuss his intentions concerning his employment. It is company policy to refer a person to the company doctor. The appellant said that he was not in a position to return to work and he wished to finish his employment.

There had been redundancies in a different part of the operation but the appellant's position was not redundant.

The quality manager gave evidence. She attended the second meeting between the appellant, his son and the site manager. The site manager asked the appellant if he was able and fit to return to work. The appellant said that he could not get a cert from his doctor to say that he was able to return to work.

Determination

The Tribunal carefully considered the evidence adduced. The conflict of evidence about what was said at the meetings prior to the termination of the appellant's employment is not relevant. The Tribunal finds that the appellant's employment was not terminated by reason of redundancy. Therefore the appeal under the Redundancy Payments Acts 1967 to 2007 fails.

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 also fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)