

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE
(*appellant*)

CASE NO.
RP1126//2011
MN942/2011

Against

EMPLOYER (*respondent 1*)

EMPLOYER(*respondent 2*)

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. F. Murphy

Members: Mr. D. Morrison
Mr. M. McGarry

heard this appeal at Castlebar on 20th April 2012

Representation:

Appellant(s) : Mr. Brendan Boyle, Citizens Information Centre, Unit 5
Cualgara, Teeling Street, Ballina, Co Mayo

Respondent(s) : In Person

The decision of the Tribunal was as follows:

Preliminary Issue

The claimant's representative stated that it was unclear which of the respondents' was liable for the redundancy payment. The claimant was initially employed by respondent 1, who was a sub-contractor for respondent 2. He was then transferred to respondent 2 in June 2009.

Respondent 2 stated that the service was continued by the claimant and there would be no problem paying the redundancy if the claimant had not terminated his own employment. Other employees have been paid their redundancy entitlement.

Claimant's case

Giving evidence the claimant stated that he commenced employment with respondent 1 on 2nd May, 2005 and with respondent 2 on 9th June, 2009. He was told his rights were transferred to respondent 2. His employment ended with respondent 2 on 9th April 2010 as there was no work. He was told he would be contacted when work became available. He waited for 9 months and did not receive a call. He received his P45 in December 2010. His gross pay was €580 per week. He did not resign from his employment.

Under cross-examination, the claimant denied getting two offers of work from respondent 2. He had no knowledge of any work being offered.

In reply to the Tribunal, the claimant said he asked his previous work colleagues every second day about employment with respondent 2. He had notified respondent 2 of his new address.

Giving evidence, the claimant's wife stated that they moved to a new address in October 2010 but had the same mobile telephone number. The respondent had a record of the mobile telephone number.

Respondent's case

Giving evidence, the General Manager of respondent 2 stated that the company was not notified of the claimant's change of address. They did not terminate the claimant's employment or make him redundant and still currently have work with the same crew. The company did not have a telephone number for the claimant as the supervisor travelled with the crew every week and the claimant did not have good English. The claimant's wife called to the office in December 2010 for his P45 as it was required for social welfare.

Determination

The Tribunal finds that the claimant failed to inform his employer (*respondent 2*) of his whereabouts and as there was work available, the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)