

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *appellant*

RP1999/2011

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley
Members: Mr. W. O'Carroll
Mr J. Flavin

heard this appeal at Nenagh on 19th October 2012

Representation:

Appellant(s) : In Person

Respondent(s) : Ms E J Walsh BL instructed by James J Kelly & Son, Solicitors, Templemore,
Co. Tipperary

Respondent's Case

The respondent company operates in the construction sector. (M), director of the respondent company gave evidence that all employees including the claimant were working on a U.K. project in March 2011. At this time her husband and fellow director (D) was terminally ill in Ireland. Work on the U.K. project was nearing completion. All employees were aware of the situation and on 17 March 2011 their son (A) informed all employees that they were being placed on temporary lay-off. They were also informed that work would be made available to them again once the family had dealt with their bereavement. (D) died on 24 March 2011.

On 19 May 2011 (M) received a text message from the claimant requesting his documents including his P45. She replied by return text stating that work would be available in the next few weeks. She then received another text from the claimant requesting his briefing. She did not understand what the word briefing meant and informed the claimant of this by text. She sent the claimant his P45 and P60 on 22 May 2011 as she thought he might be staying in his native country, Poland. The company then secured work in June 2011 and on 17 June 2011 she texted the claimant informing him that she had work available for him. She met with the claimant on 6 July 2011 and again informed him that she had work available for him. She gave evidence that

when she made this offer of work the claimant replied “No” as he had a sore finger or toe. She then wrote to the claimant on 12 July 2011 requesting confirmation in writing that he was not returning to work as she needed to fill his position. This letter was opened to the Tribunal. The claimant did not return to work and the company subsequently hired another employee to fill the position.

Claimant’s Case

The claimant gave direct evidence that he finished working for the respondent company on a building site in the U.K. on 22 March 2011. He was told by (B) from the respondent company that work was finished on the site and he could go home to Poland on holidays for two weeks. He gave evidence that he waited at home for two months and the company did not contact him. In May 2011 he telephoned (M) and was told that there was no more work. He subsequently telephoned around 20 May 2011 and requested his documents if there was no more work. He received his P45 at the end of May 2011. He returned to Ireland and signed on with the Department of Social Protection on 12 June 2011 as being available for work. He told the Tribunal that he is still available for work.

He gave further evidence that he met with (M) sometime in July 2011 and accepted that (M) offered him work. He did not know the nature of the work and did not enquire from (M) as to the nature of the work. (M) asked him if he wanted a job and he replied “No” because he had a pain in his leg as a result of an accident at work on 28 July 2010. He confirmed that he was aware in March 2011 that (D) was terminally ill. He also confirmed that when he returned to Poland he received text messages from (M) but denied that these included an offer of work. He accepted that he received the aforementioned letter from (M) dated 12 July 2011.

Determination

The Tribunal after carefully considering all the evidence is satisfied that the claimant has not made out a case that his position was made redundant. A lay-off situation occurred following the unfortunate death of a company director. The claimant, in common with other employees was laid off for a number of weeks. The evidence was that the son of the deceased director notified all employees that work would resume after the family had dealt with their bereavement. The Tribunal is persuaded by the evidence of (M) that she offered the claimant a resumption of work on two occasions by text and also by personal contact on 6 July 2011. The claimant confirmed that this offer had been made to him. The claimant refused and failed to accept the offer of employment from the respondent company and has given no reasonable or justifiable explanation for doing so.

The claim under the Redundancy Payments Acts 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

