

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:

CASE NO.

EMPLOYEE

RP1266/2011  
MN1051/2011

Against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr. G. Andrews  
Mr. F. Dorgan

heard this appeal at Nenagh on 3rd September 2012

Representation:

Appellant:

Independent Workers Union, 55 North Main Street, Cork

Respondent:

Mr David Peters, O'Malley & Company, Solicitors, 31 Pearse  
Street, Nenagh, Co. Tipperary

**Background**

The appellant commenced employment with the respondent on 5<sup>th</sup> August 2005 and claimed to have been dismissed by way of redundancy on 6<sup>th</sup> April 2011. The respondent's position was that a redundancy situation did not exist in the company in April 2011 and further that the claimant had not been dismissed but that he had resigned from the employment.

On 6<sup>th</sup> April 2011 the appellant presented an expenses claim to the respondent's office administrator (OA) in the amount of €65.00 for a pair of work pants he had purchased. OA

informed him that that she could not authorise the reimbursement as he had not obtained prior approval for the purchase and that he would have to contact the director (MD). In a phone conversation later that afternoon MD refused to reimburse the appellant for this expenditure on the basis that €65.00 was an excessive price when the item could be purchased elsewhere for between €15.00 and €18.00.

### **Appellant's Case**

It was the appellant's position that MD, told him in the phone conversation on 6<sup>th</sup> April that the company could not afford to reimburse him the €65.00 he had spent and that there was no work available for the next few weeks. The following day, he asked and MD agreed to pay him redundancy. MD asked him to return the keys to the van to OA, which he did. The following day he went to the office with the redundancy form and the remainder of the company property.

OA told him that MD would have to deal with the redundancy form as she had no authority to sign it and that everything would be fine.

In cross-examination the appellant agreed that he had not in fact been on short-time-working for several weeks prior to the termination of his employment on 6 April. The appellant denied that he had resigned because he was annoyed at not receiving a reimbursement for the item of clothing he had purchased.

### **Respondent's Case**

It was MD's position that in their phone conversation on 6<sup>th</sup> April the appellant became angry and shouted at him, "I quit and you owe me 3 months' pay because I am over 5 years in the company". He also told MD that he was leaving immediately. MD accepted this and told the appellant to return the company property he had in his possession. MD refuted the appellant's assertion that he had said work was drying up. There was quite a lot of work in the book for the coming weeks. He had to find a replacement for the appellant. The replacement commenced with him the following Wednesday. Of the final 13 weeks in the employment there had been only one week when the appellant had worked only two days and of the others he had worked nine full weeks. They did not have a discussion about redundancy. Later that day MD informed OA in a telephone conversation that the appellant had quit and that he would drop in the lap-top and mobile phone to her. OA's evidence was that MD did not mention redundancy during this phone call.

The appellant returned some company property to the office and told OA that he had quit. The following day the appellant returned the remainder of the company property to the office and handed OA an envelope containing documents. As OA was not supposed to be in work that day and had only come in to facilitate the return of the company property she told the appellant that she would look at the documents the following Monday.

It was OA's evidence that the appellant had never mentioned redundancy to her during any of their conversations and when she had asked him if he was sure that he wanted to quit and whether he had got other work he had told her that he was hopeful that he would get work with another company. The respondent had to postpone work until the respondent hired a replacement for the appellant and the replacement has been working for the respondent since.

### **Determination**

The Tribunal carefully considered the evidence adduced at the hearing. There was a dispute as to what transpired on and after 6<sup>th</sup> April 2011. On the one hand the appellant stated that the respondent agreed to make him redundant as there was a lack of work available to him. On the other hand the respondent maintained that the appellant resigned as he was annoyed when the respondent would not reimburse him for the purchase of an item of clothing for work.

The Tribunal, having regard to the evidence of the claimant's working pattern in the 13 weeks immediately prior to 6<sup>th</sup> April 2011 and the fact that work had to be postponed and a replacement found for the appellant, finds that that a redundancy situation did not exist in the company in April 2011.

The Tribunal accepts MD's version of the conversation that took place between the parties on 6<sup>th</sup> April 2011. This conclusion is supported by OA's evidence that in their conversations with her later that day both MD and the appellant indicated to her that the appellant had quit and neither had mentioned redundancy. In the circumstances the Tribunal finds that the appellant was not dismissed but that he resigned. Accordingly, the claim under the Redundancy Payments Acts, 1967 to 2007 fails. As the appellant resigned he is not entitled to any payment under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and therefore the appeal under those Acts also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)