

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP2045/2011
MN1598/2011
WT606/2011

against

EMPLOYER

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Ms. M. Sweeney
Mr. J. Flavin

heard this case in Cork on 9 November 2012

Representation:

Appellant(s):

Mr. Seamus Hickey, Hickey Fitzgerald, Solicitors,
O'Brien Street, Mallow, Co Cork

Respondent(s):

Ms. Deirdre Kennedy, David J. O'Meara & Sons, Solicitors,
Bank Place, Mallow, Co. Cork

The decision of the Tribunal was as follows:-

It was alleged that the appellant was entitled to a redundancy lump sum after an employment with the respondent from 5 January 2004 to 27 February 2011.

Claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and under the Organisation of Working Time Act, 1997, were withdrawn.

It was contended on behalf of the respondent that the appellant had been given notice of lay-off at the end of January 2011 but had turned down a subsequent offer of recall to work because he had taken up other employment.

Giving sworn testimony, PB (a director of the respondent) said that the appellant had worked for the respondent as a truck driver delivering feed. The respondent had to tender for work each year. Asked about December 2010, PB said that he had wanted increased remuneration and that the respondent was not getting the usual work whereupon the respondent looked for other work and PB thought that the respondent would get it. At the end of January 2011 PB put the appellant on lay-off. The appellant got a P45 mainly for social welfare purposes but the respondent kept in contact with the appellant.

New work did not start until April 2011. The appellant said that it was too late. He had got a new job.

Under cross-examination, PB said that the respondent had had five drivers but was now employing only PB and MB. PB had been "more than ninety per cent sure" that the respondent would get new work which would provide employment for the appellant. He had work for the appellant if the appellant had wanted it. In the end PB had to leave it to the client to get a driver. It was put to PB that the appellant would say that the respondent told him to look for another job. PB replied that he had not wanted to hold the appellant back from getting another job but that he (PB) had been confident that he would get new work. However, PB told the Tribunal that he might have told the appellant to accept new employment just in case. PB conceded: "I probably didn't know as much as I should have known." He said that the appellant had been laid off at the end of January 2011 but admitted that he had no record of this. Neither did PB have a record of when the appellant had last been paid or a copy of the P45 that the appellant disputed having ever received.

Giving sworn testimony, the appellant said that he had been a lorry driver for over thirty years. The respondent's contract had been up for renewal every year. He was told by PB and MB (directors of the respondent) that the contract was over. They told him that his job would be at an end. 31 December 2010 was the last day of the contract (with DRG). He was told to take holidays. MB said that the appellant's job was gone and PB said that the appellant would be paid redundancy.

The appellant let it go until mid-February 2011 and then rang PB on a Saturday. PB said that he had met an accountant and that there was no money but that he would "sort out" the appellant if PB sold machinery. The appellant was ringing PB and PB was saying that the appellant would be "sorted out". The appellant contacted his solicitor.

The appellant told the Tribunal that he never received notice of lay-off or a P45 or a P60 for 2010. Only PB and MB were now working for the respondent.

Under cross-examination, the appellant acknowledged that he was now working for the employer that had taken over work that had been done by the respondent. The appellant said that he had started this new job on Monday 14 February 2011.

Determination:

In circumstances where the appellant appeared to have obtained employment with a new employer just as the respondent lost the relevant contract the Tribunal was not satisfied that the appellant had suffered redundancy at all. The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

The Tribunal notes that the claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, and under the Organisation of Working Time Act, 1997, were withdrawn.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)