

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

EMPLOYEE - **appellant**  
against

EMPLOYER - **respondent**

under

### CASE NO.

RP2406/2010

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr T. Ryan

Members: Mr A. O'Mara  
Mr J. Moore

heard this appeal at Drogheda on 25 January  
and 27 March 2012

### Representation:

Appellant:

Mr Tomas Keys BL instructed by:  
Mark Cassidy & Co., Solicitors, Hill House,  
St. Peter's House, Drogheda, Co. Louth

Respondent:

Mr Alan Flanagan BL instructed, on the second day, by  
Ms. Anna Murphy, O'Reilly Thomas, Solicitors,  
8 North Quay, Drogheda, Co Louth

The decision of the Tribunal was as follows:-

### Background:

The appellant and the managing director (MD) of the respondent knew each other for over fifty years. The respondent had trained as an electrical apprentice with the appellant as his supervisor. The appellant and MD set up their own company and bought a premises in Drogheda as an asset for their pensions. After a period of 13-14 years the business got into difficulty and they parted but kept the building. In 1989 MD set up his own company and employed the appellant.

The appellant had a serious work accident in 1995. He was absent from work from 1 June 1995 to 1 April 1996. The respondent continued to pay the appellant's wages while on sick leave on the understanding the personal injuries claim the appellant took against the owner of the premises he was working in at the time of the accident was successful. Business began

todecline because of the recession and all staff were put on protective notice on 20 March 2009.

### **Appellant's Case:**

In August 2008 MD spoke to him regarding the implications of tax issues considering he was in receipt of a State Pension (he was aged 67 years of age at the time) and in receipt of a full week's wages from working for the respondent. The appellant told the Tribunal that he felt MD was trying to push him out but he continued to work for the respondent.

On 20 March 2009 he received a letter, like the rest of the staff, that due to the decline in business he was on protective notice. The appellant told the Tribunal that he was paid on a weekly basis. On one occasion he attended the office, as normal, to collect his wage cheque but there was none there for him. He contacted MD the following Monday and was told him that MD did not think the appellant had been working that week. His wages cheque was available for collection the following day.

On 8 May 2009 he was working in Castleblayney and received a call to come to the office to speak to MD. MD told him that work was scarce and asked him to stand down. He was working on affordable housing at the time and MD refused his request to be allowed to finish the project as the appellant and another electrician (ER) were both let go.

The appellant told the Tribunal, and submitted a photocopy of his diary, that he had been contacted on a number of occasions between June 2009 and May 2010 regarding work. He said that he had still been involved in some projects and some accounts and had gone back to finish them. He also called to the respondent's office. He did not work for the respondent after 20 May 2010. He was not paid for this work. When asked why he did not look for wages for the work he carried out he said that he replied that he just did not. He did not request a P45 because he said he was on a State Pension and felt he would be returning to work soon.

Later that year he was talking to a man that had told him he had been made redundant. He told this man what had happened to him and the man told him he was entitled to redundancy. In June 2010 he went to the Citizens Information Centre to get some advice. They wrote to the respondent concerning a redundancy payment. He never received a payslip or a P45 and was unaware he could pick either at the respondent's accountants office.

When asked he said he had never seen copies of his payslip until the second day of the hearing. He told the Tribunal that he had worked overtime for the respondent over time but was never paid for it. When asked he said that he originally did not think he was entitled to a redundancy payment as he was in receipt of a State Pension. When asked by the Chairman who had been the main person to contact him after 8 May 2009 he replied that it was MD's son.

### **Respondent's Case:**

MD gave evidence that all staff were put on protective notice in March 2009. In May 2009 work was coming to an end. Staff could be put on a 2-3 day week. On 8 May 2009 the appellant came to speak to MD and said that he was willing to stand aside. MD had not asked the appellant to go, the appellant decided to leave. No notes were taken at this meeting.

He told the Tribunal that his son had phoned the appellant to ask questions about problems on site and he said that appellant had been a very conscientious worker and was not surprised the

appellant had gone on site to see what the problems were. The appellant had not been paid for these visits. The appellant also called into the office on occasion to talk to the witness and the lady that worked in the office or borrow some tools. It had been brought to his attention that the appellant was working for himself with some of the respondent's customers.

He told the Tribunal that the appellant was fully aware that he could acquire any paperwork – payslips, P60, P45 – from the respondent's accountant's office. When asked he said that in 2008 he had nine staff, in 2009 he had five. He said that he had discussed the state of the business with the appellant but had not spoken to each individual about it. When asked by the Tribunal how long ER had worked for him before being let go he said it was over two years. He had not paid him a redundancy payment as ER had not asked for it.

He told the Tribunal he had not issued a P45 but the appellant could have asked for one. When asked he could not give a date when ER finished work. He explained that staff were still on a three day week. When he was told by the appellant he was leaving he had not told him that a three day working week was available.

**Determination:**

It is common case that the appellant was employed from the start of the respondent's operations in 1989 and that the employment was continuous until 8 May 2009. The Tribunal is not satisfied that the appellant voluntarily stood down on that day rather the Tribunal finds that the appellant was dismissed by reason of redundancy. Accordingly, the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date of Birth	21 September 1941
Employment commenced	15 June 1989
Employment ended	9 May 2009
Gross weekly pay	€696-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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