

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
RP2706/2011
MN2139/2011

Against

EMPLOYER– *respondent*

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 D. Mac Carthy S C

Members: Mr J. Horan
Mr. J. Dorney

heard this appeal at Dublin on 14th March 2013

Representation:

Appellant(s) : Mr Femi Daniyan BL, instructed by:
C.N. Doherty Solicitors
Rosse Court Avenue, Lucan, Co Dublin

Respondent(s): Company Director

The decision of the Tribunal was as follows:-

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, was withdrawn at the outset of the hearing. The dismissal was in dispute.

Appellant's Case:

The appellant's hours were reduced in April 2009 from 39 to 19 hours per week. He was not paid for three weeks' work in July and August 2011. He was put on lay off in August 2011. He was reimbursed for two weeks in October 2011. He sent a form RP9 with part b filled in dated 3rd October 2011 but did not receive an answer. The respondent offered work to the appellant but he was not guaranteed to be paid for it. He sought a letter confirming his lay-off status in order to receive a social welfare payment. The appellant did not wish to return to work for the respondent while he was owed wages. He started working for a bin company after 2008. He agreed that he received a text message from his employer cited below.

Respondent's Case:

The respondent disputed that the appellant was put on lay off. The business, which supplies concrete for under floor heating, suffered a loss on a contract in August 2011. All staff members were put on short time. He kept the business going and tried to keep his employees. Orders came in at short notice, but the appellant was inflexible about when he could work. The respondent understood that this was because he was working for another company driving a bin lorry. The appellant failed to show up for work one day. The respondent sent him a text message which stated that:

“I notice that you did not report for work today. Please remember when you failed to report for work you had not completed work to a number of company vehicles that are still off the road. Also you were asked to clean up your own workshop and get the old batteries ready for recycling. This work still has to be completed. We have no record of holiday leave form having been requested nor outstanding wages. Please forward time sheets for outstanding items claimed. This company has work available it is up to you.”

He contended that the appellant would have been paid for work if he showed up. The appellant's letter to the respondent on 18th October 2011 refers to the text message.

Determination:

The Tribunal is of the view that:

- 1) That the text message can be viewed as an offer of work under the Act.
- 2) In substance the offer of work amounts to and complies with notice under section 13 of the Redundancy Payments Act 1967.

Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)