

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP2911/2011

against
EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr. P. Casey
Ms. H. Kelleher

heard this appeal at Cork on 9th April 2013

Representation:

Appellant:
The appellant in person

Respondent:

Respondent's case:

The respondent provides cleaning, security and other services to business clients on a contract basis. The appellant is employed as a security officer since 3rd March 2005. A manager (MK) for the respondent placed the appellant on lay-off on 28th January 2011 as the appellant had been absent from work for a number of weeks without contacting the respondent and MK had to fill the vacant post. There was no other security position available at the time.

However on 23rd February 2011 the appellant notified the respondent that he was ill and sent in a doctor's certificate. The respondent then referred the appellant to the company doctor who stated that the appellant was unfit to return to work as a security officer. The appellant's G.P. concurred with this opinion.

MK then began to look for any available cleaning positions, within the company, as an alternative, for the appellant. However he has had no success to date in this regard but continues to seek such alternatives and has kept the appellant on the books. Should an alternative to security work be found the respondent will offer this to the appellant.

It was the contention of the respondent that the appellant has not been dismissed and that a

redundancy situation has not occurred. The respondent also contended that there has been a frustration of contract.

Appellant's case:

The appellant was ill at the time he was placed on lay-off and continued to be absent from work due to illness after being placed on lay-off. He agreed with the company doctor's opinion that he was unfit to go back to work as a security officer and told the Tribunal that he will never be able to return to that sort of work. However it was the appellant's position that , as the respondent was unable to find alternative work for him, he was affectively made redundant and was entitled to a redundancy lump sum.

Determination

The Tribunal has carefully considered the evidence adduced at the hearing. The evidence on behalf of the respondent was that the appellant is still "on its books" and MK continues to seek a suitable position which he can offer to the appellant. The position of security officer is still available to the appellant provided he is medically fit to carry out this role. Being unfit to do the work one is employed to do does not give rise to a redundancy situation. In the circumstances the Tribunal is satisfied that the appellant's employment with the respondent has not been terminated and that his position has not been made redundant. Therefore the appeal under the Redundancy Payment's Acts, 1967 to 2007 fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)