

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – appellant-

RP2616/11

Against

EMPLOYER - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr C. McHugh

Mr J. Jordan

heard this appeal at Wicklow on 25th January 2013 and 24th April 2013.

Representation:

Appellant:

Respondent:

Appellant's Case:

The appellant commenced employment with the respondent on 15th August 1996. Although the respondent had contracts for several sites throughout Ireland the appellant only ever worked on one site. Since 2004 the appellant's hours of work were 3pm to 11pm and this suited him as it allowed him to work around family commitments.

In September 2010 the appellant was informed that the site on which he was employed was to be wound down over the following 12 months. The appellant wanted to remain on that site for as long as possible but did consider offers of alternative work with the respondent before he was placed on lay-off on 29th August 2011. He was interested in one particular offer and initially accepted that position but then realised that he could not meet the requirement of having a drivers licence before the uptake date. Other positions were offered to him during lay-off but none were suitable alternatives for various reasons which included location, rate of pay and hours of work.

Having offered the appellant a number of alternative positions the respondent told the appellant that if he refused to take one of these positions he would be deemed to have resigned and would not be entitled to a redundancy lump sum. The appellant subsequently received his P45. However he was later offered another position but refused it on the basis that he thought he would lose his previous service with the respondent.

The appellant considered himself dismissed by way of redundancy and was seeking payment of a redundancy lump from the respondent.

Respondent's Case

The respondent is a provider of facility services. During the appellant's tenure RH, was Business Unit Manager and looked after key accounts in the Dublin region.

The appellant worked on site SP as a contract cleaner. The respondent held the contract for this site

In early 2010 an emergency meeting was called. SP informed the respondent of their intention to close the site over a phased 12 to 18 month period. RH engaged with staff throughout the process and kept abreast of developments.

A template was forwarded to all staff for completion the purpose being to allow the respondent to source suitable alternative employment for all the affected employees on the site. The respondent wanted to redeploy all staff and offer them suitable alternative employment from SP and staff were kept up to date on alternative vacancies elsewhere as they arose. The respondent sourced positions as close to the staffs' preferences as was possible.

The appellant predominantly worked full time 3 pm to 11 pm. The appellant was offered several positions over an eighteen month period most of which were part time positions.

A full time position became available in Co. Wicklow and RH spoke to the appellant about the vacancy and the hours of work were 12.30 to 7.30 pm. The appellant was very excited about it. She told him that he would need to be able to drive. The appellant confirmed that he could drive and was in possession of a provisional licence. The appellant was advised that there would be no entitlement to redundancy should he choose not to accept the role and non acceptance would be considered that he had resigned from his employment.

It subsequently transpired that the appellant did not hold a provisional licence

The appellant was placed on lay off on 29th August 2011.

On 15th September 2011 the appellant was offered a full time role in UCD and again reminded that there was no entitlement to redundancy should he choose not to accept the role and non acceptance would be considered that he had resigned from his employment. The appellant did not accept this position. On 22nd September 2011 the appellant contacted the respondent and told them that he had reconsidered the offer of the UCD role and was now in a position to accept that role. It transpired that role had been filled. As the appellant had not accepted that role and his cessation of employment had commenced. The appellant requested his P45 and asked the respondent to keep him on their books.

The appellant made no further contact with the respondent.

Determination:

The appellant was informed on 4th May 2010 of the pending wind down of the SP position in

Bray. The respondent did make numerous attempts to secure the future employment for the appellant. On two occasions he did accept a position but later refused the offer. In total the claimant was offered:

- 4th May 2010 Janitor Full Time position 12.30 – 7.30
- 2nd June 2010 UCD Part Time morning position
- SP in Rathdrum 30 hours per week
- Dublin Dental Hospital Part Time afternoon
- UCD Full Time 9 am -5 pm
- UCD, Blackrock Part Time position 6.30 pm – 10.30 pm
- 22nd August 2011 Notified of lay-off to start 29th August 2011
- 15th September 2011 UCD Ground Maintenance Monday – Friday. €10.25 per hour
- 22nd September 2011 Notified that non-acceptance now considered a resignation
- 19th October 2011 Site N Monday – Friday. 4 pm – 8 pm at €9.50 per hour

It would seem that the appellant was holding out for a position that reflected his previous hours and pay. He did state that he was restricted due to his childcare needs however he stated that he only contacted one person who could take on his childcare responsibilities. Her weekly rate was too high. He does not seem to have made any other attempts to find alternative or suitable childcare.

The Tribunal accepts that the respondent can only offer positions that they have available to them. None of the numerous positions offered to the claimant were similar to his previous job. He did not drive and would have had substantial travel times on public transport to UCD, UCD Blackrock, Dental Hospital and Rathdrum. Also the rate of pay being offered was substantially less.

In the all of the circumstances, the Tribunal finds that the respondent should have made the appellant redundant.

The Tribunal is satisfied that the appellant is entitled to a redundancy payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth: 16th September 1967
Date of Commencement: 15th August 1996
Date of Termination: 22nd September 2011

Gross Weekly Wage: €503.97

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)