

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

-appellant

CASE NO.
RP262/2012

against
EMPLOYER *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly B.L.

Members: Mr. T. O'Sullivan
Mr P. Trehy

heard this appeal at Cavan on 8th May 2013

Representation:

Appellant:

Respondent:

Dismissal is in dispute in this case so it is up to the appellant to give evidence first.

Appellant's Case

The appellant worked for the respondent from July 1981 until he went on long term sick leave in June 2002. He is a welder/steel fabricator. While on sick leave he receives a Social Welfare payment and a payment of €535.00 as part of the respondent's permanent health insurance scheme. The respondent pays for the appellant's membership in the scheme. The amount payable from the health insurance scheme is based on the appellant's salary.

In 2008 the respondent announced that there would be redundancies within the company. The appellant was not informed of this by the respondent but by his brother. He was not offered the opportunity to be considered for redundancy. Approximately two years later a further redundancy scheme was announced. This was a voluntary scheme. The selection criteria used within the respondent is, 'last in first out', confined to an area of work. The respondent did not notify the appellant of the voluntary redundancy scheme.

The appellant contacted the respondent Financial Controller on a number of occasions to get details of the redundancy scheme but received no response or information. The appellant also contacted a shop steward within the company and was told he had no documentation for him. The appellant discovered that people with more service than him in his area of work were made redundant.

The appellant was not dismissed by the respondent or ever told that his position was being made redundant. The appellant agrees that he is still an employee of the respondent.

Respondent's Case

The operations manager (DC) gave evidence that the appellant is an employee of the company, out on long term sick leave. If the appellant is fit to return to work there is a position available for him and a need for his skills. This witness was not aware that the appellant was trying to contact the respondent; if he had been, he would have responded to him immediately.

The appellant was not informed of the redundancy schemes in operation as he was out on sick leave. Making the appellant redundant would not achieve a cost saving as per the purpose of the redundancy scheme. Two members of staff that were out on sick leave returned to work and were subsequently made redundant; the appellant did not return to work.

In addition to the health insurance payment the appellant also receives an annual service payment and an annual bonus; most recently he received €1,600.00 in March 2013.

Determination

In order to be eligible to pursue an appeal under this Act, Section 7(1) of the Redundancy Payments Act 1967 stipulates that,

'An employee, if he is dismissed by his employer by reason of redundancy or is laid off or kept on short-time for the minimum period, shall, subject to this Act, be entitled to the payment of moneys which shall be known (and are in this Act referred to) as redundancy payment provided'

The appellant by his own admission was not dismissed and remains in the employ of the respondent. Ideally, the respondent should have informed the appellant of the redundancy schemes in operation but the appellant did admit that he is an employee, is in receipt of bonus payments and is a beneficiary of the company health insurance scheme.

The Tribunal is satisfied that the appellant was not dismissed by way of redundancy or otherwise, therefore the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)