

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE *-appellant*

CASE NO.  
RP77/2013

against  
EMPLOYER *-respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney B.L.

Members: Mr T. Gill  
Ms H. Murphy

heard this appeal at Ennis on 24th June 2013

#### **Representation:**

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Appellant: Mr Conor Glendon, Conor Glendon, Conor Glendon & Co Solicitors,  
Ard Na Greine, Clonroadmore, Ennis, Co Clare

Respondent: Mr. Stephen Nicholas, Nicholas, Nolan, Solicitors, Parnell House,  
50-52 Parnell Street, Ennis, Co. Clare

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

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

The appellant was a machinery driver for the respondent employer from April 1999. The respondent had a contract with the local county council that the appellant had worked on for a number of years. On Wednesday the 18<sup>th</sup> of January 2012 the appellant was informed by the council that the respondent had lost the contract. The appellant informed the respondent that the contract was lost due to a technicality; the respondent had not named the appellant as the proposed driver.

The respondent informed him that he had no work for him until he re-applied for the council contract in three months. The appellant asked for his P45 in order to claim Social Welfare in the interim. The appellant collected his P45 the following Monday and asked him about redundancy and whether his service would be broken for the three months. Neither the appellant nor the respondent knew what the position on service was so they decided to get advice. The citizen's information centre informed the appellant that serving an RP9 would protect his redundancy. The appellant contacted the respondent on Tuesday and told him about the RP9

form.

When the appellant collected his P45 on Monday he also informed the respondent that he had heard of a driver job coming up. The respondent said that he had also heard about; it was with the company that had secured the council contract in the respondents place. The appellant started with the new company on the 1<sup>st</sup> of February. He expected to return to work for the respondent in three months.

The appellant gave the respondent his 'signage cert' to submit for the tender for the contract. Approximately a week later he contacted the respondent regarding the contract. The respondent did not secure the contract with the council so the appellant contacted him a couple of weeks later regarding redundancy. The appellant attempted to contact him on a number of occasions but the respondent always said he was busy. This led the appellant to visit the respondent's house in September to speak to him regarding redundancy. The respondent informed the appellant that he was not entitled to redundancy as he had left his job to take up alternative employment.

The appellant is a part-time farmer. He disputes telling the respondent that he wouldn't feel the three months passing on Social Welfare when he has his farm work. The appellant was not offered alternative employment and he did not request any time off.

A conversation did take place in October where the respondent suggested that the appellant tender for the council contract and rent the machine off the respondent. The appellant did not see the point in both him and the respondent tendering for the same contract.

### **Respondent's Case**

The respondent held the contract with the council for 20 years before losing it. The respondent had 5 machines and one other part-time employee. On Friday the 20<sup>th</sup> of January the appellant asked for his P45 as he needed it to claim Social Welfare. They discussed the loss of the contract and how to get it back in three months. The appellant said he would claim Social Welfare until the respondent got the contract back. The respondent did not tell him that he had no work for him as he had another machine for the appellant to work on. The appellant requested the time off so the respondent did not offer the details of alternative employment.

On Monday the appellant collected his P45 and asked why the respondent hadn't told him that the company that had secured the contract were looking for him. There was no mention of redundancy. There was no phone call on Tuesday. The respondent met the appellant on a number of occasions over the next few months, redundancy or an RP9 form were never mentioned.

In April the respondent suggested that the appellant could also tender for the contract with the council. The logic being that whichever of them secured the contract there would be work for the appellant and the respondent's machine. After failing to secure the contract in April redundancy was mentioned. As the appellant was working for the new company they re-secured the contract. The respondent told the appellant that he did not think he was entitled to redundancy as he had left his employment to work for the competitor and if he had not left this employment the respondent would have secured the contract when it came up for renewal 3 months later. That was the only conversation they had regarding redundancy.

### **Determination**

A genuine redundancy situation did not exist within the respondent. The appellant left employment of his own accord to take up employment with a competitor. The appeal under the Redundancy Payments Acts 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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