

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
RP530/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly BL

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal in Letterkenny on 6 November 2008

Representation:

Appellant(s) :
In person

Respondent(s) :
In person.

The decision of the Tribunal was as follows:-

The appellant sought an award of redundancy on the basis that he had commenced employment with the respondent on 23 May 2004 but had received verbal notice of termination on 18 March 2008.

The respondent told the Tribunal that there had been no contract but that the appellant might have got payslips. The respondent said that the appellant had just left, that business had been slack and had been suffering greatly but that the respondent had wanted the business to continue. The shop closed. It had not opened since.

Giving sworn testimony, the appellant said that, before working for the respondent, he had been in sales and that the respondent had approached him to work alongside the respondent's son. The appellant started to sell for the respondent. The appellant was left in the showroom after the respondent's son went to the United States. The appellant worked from about 10 a.m. to 6 p.m. He usually stayed open at lunchtime.

The appellant had no difficulties. He got on well with the respondent and the respondent's family. The appellant worked every second Saturday but got no extra money for it. He was glad of the job. He worked until about 4 p.m. on Saturdays. The respondent came and went. The respondent was also a plumber and went out on sites. Sometimes, the appellant went to sites to do a bit of selling.

There was a drop-off in sales. There was a change in the road infrastructure in Carndonagh. This change was now about two years in place. The appellant was not too sure about the cause but was definite that there had been a downturn. The building industry had gone down. The respondent had a competitor across the street. There was less business. The respondent and the appellant were always pushing to get money in. It was tough going.

The respondent was in contact with an accountant. A lady looked after the respondent's books. The appellant could not quote figures. Towards the end, the respondent let a plumber go to part-time. The respondent wanted to cut overheads. Talk was ongoing. The appellant asked the respondent if they should close. The respondent said no. Finally on that Wednesday (19 March 2008) the respondent said that they would have to close. The appellant told the Tribunal that, if it had to happen, it had to happen and that he had not thought that it would get any better. He felt no malice towards the respondent.

The appellant got the respondent on the phone twice. The key of the shop was probably still in the appellant's house. The appellant was told that redundancy was only for big firms. He had no written agreement. The respondent said on that Wednesday that the appellant could sign on and go to Malin to work for commission. The appellant knew that the place was not doing well. The appellant left on Good Friday (21 March 2008). He saw the respondent on Wednesday and spoke to him on the phone on Thursday. The respondent said that he would come up but did not do so. The conversation in which the respondent had said that he would have to close had been on the Wednesday.

On many an afternoon the respondent had been asked if the business would survive the following week. The appellant could not recall any conversation on Thursday 20 March or Friday 21 March. He worked Thursday 20 March but did not stay past 1.00 p.m. on Friday 21 March.

In questioning by the Tribunal, the appellant was asked if the respondent had told him to close. The appellant replied that the respondent had said that was it and that, if it had been off the appellant's own initiative that the appellant had been closing on Good Friday 21 March 2008, the respondent would have told him so. The appellant reiterated that the respondent told him to close on that Friday and that he could go on the road and work for commission.

Asked with whom he had worked for the respondent, the appellant replied that he had worked with the respondent's son and the lady who had come to do the books. Asked about holidays, the appellant said that he had not taken all his holidays. He added that when he was sick the respondent would come in.

The appellant told the Tribunal that he did not know if the shop had opened the week after the appellant had closed it. There was no contact. Having been told by someone that he was entitled to redundancy, he rang the respondent and the phone calls after that were about redundancy. That would not have been in the first week after his employment because he had not known about redundancy. It had been said on Wednesday 19 March 2008 about going on the road on commission. The work would have been the selling of bathrooms and tiles. There was no wage

involved.

In cross-examination it was put to the appellant that the only person who had mentioned closing the shop had been the appellant who had said that he was closing on that day. It was also put to the appellant that the business had worked until 2.00 p.m. on every Good Friday but that the appellant had gone before that time on Friday 21 March 2008. The appellant replied: "I'm not falling out with you. I was told I was due redundancy. I didn't even take holidays. I was fair and you were fair. It was not my decision to close the business."

It was put to the appellant that, when he had started, he had been employed to go on the road to bring in business but that the respondent's son had left and all that the respondent had asked at the end was that the appellant do the same again. The appellant did not comment on what his employment would have been if the respondent's son had not emigrated.

When the Tribunal now asked about wages, the respondent replied that it had never gone so far as to discuss wages. The appellant said that he had taken the oath and that the respondent had said that he could sign on and get commission.

Giving sworn testimony, the respondent confirmed that his son had gone to the United States and that the appellant had worked from 10.00 a.m. to 6.00 p.m. (and every second Saturday) for his wages. The respondent confirmed that p.r.s.i. had been paid.

The respondent stated that a road bypass was put in and a lot of sales were got by going on the road. The appellant worked in the shop. The respondent was plumbing all the time. When business went badly they went out on the road to bring in business. The respondent told the appellant that he (the appellant) would have to go out on the road. They were having ongoing discussions about what to do about the shop. For a year the respondent kept the appellant on when the money was not there. Some weeks the respondent did not get any money.

The respondent told the Tribunal that on the Wednesday (19 March 2008) he went in, asked the appellant what they could do to get business and said that this was not working. The appellant asked if he (the appellant) should close the shop. The respondent said that if this continued the respondent would not open the next week and so something had to be done about this. The respondent had been saying that they needed to come up with something. The respondent did not hold anything back from the appellant who was well aware that things were not going well.

Once, the respondent asked the appellant why he was not doing quotations. The appellant replied that they could not afford to get the materials. The business was not going to open the next week. The respondent asked the appellant to go on the road. The appellant could even sign on for a few days and go on the road. No money was mentioned. The appellant said that he could not go on the road. The respondent was saying that the appellant could do three days on the road and sign on for the other days. The respondent did not know what to do. He did not discuss redundancy with anybody. He had no conversation with the appellant about redundancy. If things did not improve in forty-eight hours the respondent would close the shop. He was only asking the appellant to go back to his initial work position. He (the respondent) did not have a clue how they would fund it. The appellant asked what the respondent wanted him to do and if the appellant should close the shop. The appellant worked the next two days. There was no contact made on Good Friday 21 March 2008.

In questioning by the Tribunal it was put to the respondent that he had said that, if the situation continued, the business would not open the next week. The respondent did not refute this.

Further questioned by the Tribunal, the respondent said that nothing had happened between Wednesday 19 March and Friday 21 March to change the situation. The respondent said that a son had a bad accident, that he (the respondent) had stayed plumbing the next week and that the shop had remained closed from that time.

In closing submissions, the appellant said that he had not been supplied with a car, that his own car had not been insured for the work, that he had been all the time working and was he supposed to go on the road with his own insurance? The appellant said that suppliers had not been giving the business the materials and that the appellant could not sell some materials because he knew that they did not have them in the respondent's shop. The appellant said that no wages had been offered to him after the shop closed. He was told that it would be commission only. He concluded by saying that it was not in his nature to close anybody's business.

Asked if he wished to make a closing submission, the respondent said that he did not wish to add anything to the testimony he had already given.

Determination:

The Tribunal determines that there was a redundancy situation, that the appellant was not replaced, that the shop did not open again and that no suitable alternative employment was offered. Under the Redundancy Payments Acts, 1967 to 2003, the Tribunal finds that the appellant is entitled to a redundancy lump sum based on the following details:

Date of birth	16 April 1947
Date employment commenced	23 May 2004
Date of termination	21 March 2008
Gross weekly salary	€411.37

(It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.)

This award is made subject to the appellant having been in insurable employment under the Social

Welfare Acts during the relevant period.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)