

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP1408/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms O. Brennan

Members: Mr. M. Flood
Mr P. Trehy

heard this appeal at Dublin on 27th April 2009

Representation:

Appellant :

Ms Muireann Grogan B.L., instructed by Lockhart O'Leary Maher,
Solicitors, 7 Annesley Bridge Road, Fairview, Dublin 3

Respondent :

Mr Daniel Kelleher B.L., instructed by Maguire McNeice & Company,
Solicitors, Bray House, 2 Main Street, Bray, Co Wicklow

The decision of the Tribunal was as follows:-

The respondent is an international charitable trust against drugs and drugs prevention registered in the Netherlands

Respondent's case:

The appellant who worked as an administrator for witness became ill and from February 2007 he was unable to work due to ill health. Witness knew nothing of the administration and relied on the appellant. The respondent / trust was funded through the HSE and witness was answerable to the health board. Witness continued to pay the appellant his full salary and she felt sorry for him. She met with the health board as she was not sure if it was okay to continue paying him. She was advised that he should hand in medical certificates and apply for payment to the health board,

however the certificates were not received but she continued to pay the appellant full salary. For some time witness and others did the claimant's work for him. Around the March/April 2008 the appellant came to the office and said he could not continue, it was health board money and he was willing to take half pay. From April 2008 he was on half pay. The landlord spoke with witness and told her he had met the appellant and he said that he was leaving the organisation. On hearing that the appellant had said he was leaving she arranged to meet him at the end of April 2008. Their discussion was amicable and witness paid the appellant three/four weeks pay at half salary rate plus a month's salary. The appellant agreed that the organisation did not have any spare money and he was happy with the amount paid.

Witness told the appellant she was closing down the facility as she needed him as her administrator. The respondent was free to employ another administrator and there had been a flood in the office. Witness closed down the office and continued to work from home. She had/suffered a stroke and she did not want any more stress. It was difficult to replace the appellant and she could not just bring in anybody. The office would not be viable without the appellant. Witness was founder of the organisation and when the appellant approached her he said he could run the office and at this stage he was under a FAS scheme. This later changed to HSE funding.

In cross-examination witness stated that she had asked the appellant to furnish sick certificates and he would receive payment from the State with the respondent then paying the difference. While she typed up this request on her computer it could not be located. She knew that the appellant was seriously ill and it was taken on trust by the respondent. The HSE policy in relation to payment while on sick leave was full pay up to six months and half pay after that.

In answer to questions from Tribunal members witness stated that she signed the cheques in relation to the HSE funding and the appellant was not on the HSE payroll. She paid the appellant his full salary for a year, then half pay for two months after which time his employment ceased. There was one other staff member on the payroll who left of her own accord and another on work experience was paid through another scheme. Witness herself was not paid the respondent was a voluntary organisation. She was taken by surprise when the appellant claimed redundancy.

Counsel for the appellant stated that the respondent only received six months funding from the HSE for 2008. Witness stated that the funding was paid into the bank on a quarterly basis.

The Tribunal also heard evidence from the landlord whose premises the respondent occupied for in or around seven years. He met the appellant in April/May 2008 and he told witness he was finished working with the organisation.

Appellant's case:

The appellant commenced with the respondent in December 1994. In the beginning the funding came through FAS. He became ill just before Christmas 2006 and he had his last operation at the beginning of 2008. His health then improved and he had intended returning to work. He and the respondent were of a similar age and they had a most amicable relationship. He asked the respondent about the terms of the sick leave. He did not have a formal conversation with the landlord and it was not for him to know if he was going to finish working. The respondent was the one he should talk to. They had a family type relationship. The appellant had been very ill and it was thought he would not survive however after the surgery he improved and came on leaps and bounds. He did not resign. When he was seriously ill there was no question of his employment being terminated. The only conversation he had with the respondent was that it would be difficult to

continue with the Irish office but that the organisation would continue in Europe.

When the respondent called to his house he was expecting her visit. She gave him a cheque and said she was winding up the office and that this was the last time she would have money to pay him. He was treated well by the respondent. He did not know when the office would be closed but he was told it would be wound down by June 2008. He understood that the premises was vacated by July 2008. He was also told by an official from the HSE that they had paid the respondent the funding for the first six months of 2008 and that if the respondent ceased so would the funding. He rang the appropriate Department and contacted his Solicitor and was told about statutory Redundancy. He was never told he was dismissed or made redundant.

In cross-examination the appellant stated that he did not remember saying to the landlord around April/May 2008 that he was leaving. He had visited the office to pick up some personal belongings.

In answer to questions from Tribunal members witness said that there was no direct correspondence between him and the respondent as to how his employment was to come to an end. He did move personal belongings from the office as there had been a flood. He was paid his full salary for twelve months and half pay after that.

Determination:

Notwithstanding the appellant's ill health the offices wound up and there was no further funding from the HSE. The Tribunal having considered all the facts is satisfied that the appellant was made redundant and he is entitled to payment of statutory redundancy under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth	07 th December 1940
Date employment commenced	16 th December 1994
Date employment ended	26 th May 2008
Gross weekly salary	€600

Please note that this award is being 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)

