

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
Employee

CASE NO.
RP1001/2008

against
Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr S. Ó Riordáin B.L.

Members: Mr. J. Hennessy
Mr J. McDonnell

heard this appeal at Waterford on 13th March 2009

Representation:

Appellant: In Person

Respondent: A director of the company.

The decision of the Tribunal was as follows:

The Evidence:

The appellant commenced his second term of employment with the respondent in July 2005. In January 2008 the appellant was sent to work in Naas.

Mr. O'N, a director of the respondent gave evidence that he became aware the appellant had left the respondent's employment when he received the appellant's timesheets. When the director made enquiries he was told that the appellant had left his employment on 6th March 2008. The director subsequently received a telephone call from the appellant some four or six weeks after the 6th March 2008. The appellant asked Mr. O'N to meet with him. When they met the appellant asked Mr. O'N if he would provide him with a letter, for personal reasons, stating that his employment had ended due to a lack of work. Mr. O'N took a sympathetic view of the matter and provided the appellant with this letter a number of days later. The letter was dated the 7th May 2008 and stated that "*due to a completion of a contract and a slow down in activity it was necessary to terminate the claimant's employment.*"

In reply to questions from the Tribunal, Mr. O'N confirmed there was sufficient work available for the appellant at the time of March 2008. The appellant's work was absorbed within the workforce at that time and labour was re-arranged from one area to another. Since March 2008 a number of employees have been made redundant.

It was the appellant's evidence that on 5th March 2008 the project in Naas was completed and he was sent to work at a location in Offaly. Mr. K, another director of the company was in charge on this site. An argument ensued between them. At 10.30am on 6th March 2008 the appellant was told by Mr. K to get his stuff and "to f**k off". The appellant felt that ultimately he was being given an ultimatum by Mr. K and that he would have to endure continued bullying if he continued to work for the respondent. He perceived what Mr. K said to him on the 6th March 2008 as a dismissal. Mr. K told the appellant that he had received complaints from the office staff about the appellant but he would not tell the appellant who had made the complaints. Mr. K told the appellant that his job had been saved on a number of occasions but he would not elaborate on what he meant by this. The appellant believed that he was let go by Mr. K. The appellant asked Mr. O'N for a letter stating that he had not left his employment of his own volition. He confirmed that he required the letter for personal reasons.

Mr. O'N of the company stated that he was unaware of any such incident or conversation between the appellant and Mr. K on 6th March 2008. He was surprised that if the appellant felt that he had been treated unfairly that he had not contacted him, as they had worked together for a number of years.

Determination

The import of the appellant's evidence is to the effect that the termination of his employment arose either by way of his dismissal or his resignation following a work related argument with Mr K, a director of the respondent's firm. The appellant's evidence is also to the effect that his request to Mr O'N (the second director of the respondent's firm) was for a letter indicating that he had not resigned from his position. There is no evidence either from the appellant or from the respondent that any issue of redundancy was raised when his employment was terminated or in his subsequent discussion with Mr O'N when he sought a letter from his employer in relation to the matter.

The Tribunal accepts the evidence of the respondent that the letter of 7th May 2008 from the respondent to the appellant, which pointed towards a redundancy situation, was issued out of sympathy with the personal difficulties of the appellant and that, in fact, the appellant would not have been let go if he had wished to remain in employment after 6 March, 2008.

The Tribunal is satisfied on the evidence that a situation of redundancy did not exist in relation to the termination of the appellant's employment and the Tribunal, therefore, determines that the appellant's appeal under the Redundancy Payment Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)