

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE -**Appellant**

CASE NO.
RP931/2009

against
EMPLOYER -**Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Taaffe

Members: Mr. J. Hennessy
Mr. P. Trehy

heard this appeal at Carlow on 5th February 2010

Representation:

Appellant: In Person

Respondent: A director of the company.

The decision of the Tribunal was as follows:

Respondent's Case:

The appellant commenced work with the respondent on the 7th March 2006. Giving evidence the director stated that the employees disbanded on the 19th December 2008 for the Christmas period. The director informed the employees (including the appellant and his brother-in-law) that they should return to work on the 6th January 2009, as in previous years.

Work resumed on the 6th January 2009. The appellant failed to return to work on this date. He did not contact the director in relation to work until the 31st January 2009. On this date, the director received a text message from the appellant stating that he was returning to Ireland in one week's time. The appellant enquired if he still had a job with the company. He wrote that if he did not have a job then he was seeking his compensation, P45 and week-in-hand. The director did not respond to this message. Subsequently, the director received some further text messages from the appellant. He did not receive a telephone call from the appellant during January 2009. In mid-February 2009 the director posted the appellant's P45 and his week-in-hand to an address provided by the appellant

In reply to questions from the Tribunal, the director confirmed that two employees were made redundant in early 2008 and a further employee was made redundant prior to Christmas 2008. The company does not employ anyone at present. At the time of January 2009 the company

was pricing work and had sufficient work on hand for the month of January. A redundancy situation arose in relation to other employees some time after this. The employees were made redundant including the appellant's brother-in-law. The appellant's brother-in-law had not returned to work on the 6th January 2009 but he had contacted the director prior to this date to explain his personal circumstances. He returned to work during that month and was later paid his redundancy from the company.

Appellant's Case:

The appellant gave evidence with the assistance of a Tribunal appointed interpreter.

The appellant confirmed his holidays commenced on the 19th December 2008; as was similar to other years. However, by December 2008 it was known amongst the employees that work would be scarce after Christmas. Two employees were made redundant during the month of December.

In or around the 17th December 2008 the appellant and the director agreed that the appellant would contact the director towards the end of his holidays to see if work was available. In the event there was no work available, they agreed that the appellant would then take some extra holidays. When the appellant telephoned the director on the 12th January 2009 he was told there was no work available. The appellant subsequently sent text messages to the director seeking his P45, week-in-hand and a redundancy payment. The appellant accepted that the company had paid redundancy to his brother-in-law.

Determination:

The Tribunal carefully considered the evidence adduced by both parties. The Tribunal is satisfied that the respondent company had work for the appellant in January 2009 and that a redundancy situation in relation to the appellant's employment did not arise at that time. The Tribunal notes that the appellant accepted that his brother-in-law who returned to work had been paid his redundancy entitlement. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2003, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)