

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO:
RP2525/2009

EMPLOYEE *-appellant*

against

EMPLOYER *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony, B.L.

Members: Mr. G. Andrews
Ms.S. Kelly

heard this appeal on 26 November 2010

Representation:

Appellant: No appearance or representation

Respondent: Mr. Ambrose Downey, IBEC, Gardner House, Bank Place, Charlotte Quay, Limerick

Appellant's Case

The appellant commenced employment with the respondent company, which manufactures concrete products, in February 2002. In January 2009 the appellant's hours were reduced as work was becoming scarce. The appellant was informed that there were not enough hours to keep him in full-time employment. The respondent also owned a farm and on or around 07 January 2009 he sent the appellant to work with the cattle for 3 to 4 weeks to make up some hours. The appellant was then put on lay-off for a few days.

The respondent informed the appellant that there was some work available at his cousin's quarry and that he would continue to pay him while he worked there. The appellant commenced work in the quarry on 25 February 2009.

The appellant had a work permit that allowed him to work only with the respondent. After two weeks working at the quarry the appellant asked the respondent what the situation would be going forward as he was only allowed to work for the respondent under the terms of his work permit. The appellant was informed that there was no work for him with the respondent

and it might not pick up until the summer. It was not feasible for the appellant to wait so he requested his P45. The appellant's P45 is dated 2 March 2009. The appellant requested his redundancy but the respondent informed him that he had no money to pay it. The respondent's accountant completed the RP50 but failed to sign it.

Respondent's Case

The respondent's business is seasonal and is always quiet between January and March. In 2009 it was quieter than normal. The respondent put all the staff on reduced hours except for a few who remained in full-time employment. The respondent's business had decreased significantly and all the staff were informed of this and the respondent decided to 'tough it out.' All staff took a pay cut to avoid redundancies. The appellant had been in full-time employment up to 2009. The appellant was one of his top workers as well as being flexible. When the work on the chimneys decreased he put the appellant driving and later on he put him to work on his farm.

The respondent was aware that the appellant was not happy doing the farm work but he had no more driving for him to do. The respondent suggested that the appellant go to work at the quarry and he started there the following week. There was no agreement to pay the appellant when he went to work at the quarry. In going to work at the quarry the appellant left his employment with the respondent and the respondent issued him with his P45.

The respondent did not offer the appellant redundancy. The appellant contacted the respondent on numerous occasions requesting his redundancy. The respondent received correspondence from the Redundancy Section in the Department of Enterprise, Trade and Employment requesting a set of accounts to prove the respondent was unable to pay the appellant's redundancy. The respondent replied to the Department informing them that the appellant had resigned from his employment and had commenced employment with a new employer (the quarry owner) as of 25 February 2009. The respondent had around 27 employees at the time of the hearing of the claim.

The appellant did some work on the farm, as was normal practice for all the staff if business was quiet. There was no communication or agreement with the quarry regarding the appellant's employment other than when they requested the appellant's P45.

Determination

The appellant was employed by the respondent's business, which manufactures concrete products. The Tribunal does not accept the appellant resigned from his employment with the respondent. Under the terms of his work permit the appellant was only permitted to work for the respondent. The Tribunal finds that the appellant's employment with the respondent was terminated by the respondent on or around 24 February 2009 when the respondent informed that there was no more work available for him and suggested to him that he work in the quarry. Accordingly, the Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth:	10 August 1974
Date of Commencement:	15 February 2002
Date of Termination:	24 February 2009
Gross Pay:	€600.00

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)