

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

CASE NO.

MN652/2006
RP519/2006

against
Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr J. Walsh
Mr O. Nulty

heard this appeal at Drogheda on 16th July 2007

Representation:

Appellant(s) : Ms Marie Hayes, Dundalk Resource Centre, 30 Clanbrassil Street, Dundalk,
Co Louth

Respondent(s) : Ms. Cliona McAleer BL instructed by
Mr. Robert Taylor, McKeever Taylor, Solicitors, 34 & 35 Laurence Street,
Drogheda, Co. Louth

The decision of the Tribunal was as follows:-

Respondent's Case:

One of the two co-owners (who were brothers) of the respondent company gave evidence. He stated that the appellant was recruited from vocational school as an apprentice electrician. The appellant completed his four years training with the company and FÁS and qualified as an electrician in 2005.

The respondent company had various contracts and the appellant was employed to work on a twenty-one housing scheme for Dublin City Council (DCC) in Finglas. The appellant was to complete the first and second fix of the electrical wiring. However, the inspector from the DCC found faulty wiring on the alarm system in nineteen of the twenty-one houses. Colour coding had not been adhered to. The witness told the Tribunal that this could have dangerous consequences for the prospective homeowners. The appellant had used incorrect cabling even though he had been instructed by the witness's brother (the appellant's supervisor) how the work was to be carried out. The witness told the inspector from DCC that the work would be corrected. The appellant and a

senior electrician corrected the faulty wiring. This senior electrician had originally trained the appellant.

The witness told the Tribunal that the appellant was replaced on site and there had been no redundancy. His brother (the appellant's supervisor) had dismissed the appellant summarily.

On cross-examination the witness stated that the appellant had not had a contract of employment. There was no grievance procedure in place but problems were dealt with "on the day". The respondent company was in the process of setting up these procedures. The witness stated that as the appellant was a trained electrician, he should have known what he was doing. When asked, the witness said that there had been previous problems with the appellant and his work.

The second witness for the respondent was the brother of the first witness and co-owner of the respondent company. He stated that he had been the appellant's supervisor.

The witness told the Tribunal that the appellant's attitude had changed six months before his dismissal. The appellant would be instructed to carry out work a certain way but he would do it his way. However some time later, he felt it was logical to have the appellant working on the twenty-one housing scheme on his own as he was one year "out of his time". The witness told the appellant what cable was to be used on the twenty-one housing scheme and had completed two of the houses with the appellant. However, faults were discovered in the remaining nineteen houses, and cost the respondent company approximately €14,000 to correct the faulty work. After the faults were corrected the appellant continued to work for the respondent for two weeks, however, he had not learned from his mistake. Loose wiring had been found in a house the appellant was on. The witness told the Tribunal that he had informed the appellant what had gone wrong and dismissed him. There was no question of redundancy and other staff were employed to take over from the appellant.

On cross-examination the witness told the Tribunal that he had discussed the circuitry of the wiring on the twenty-one houses with the appellant over two or three days. He explained that he had checked the "first fix" with the appellant and was happy with it. When asked, he told the Tribunal that he had informed the appellant that he had a number of problems with him and his work. He said that he had to let the appellant go, as he could not continue with the appellants "abilities".

Appellant's Case:

The appellant gave evidence. He stated that he had completed the first two houses of the twenty-one scheme with the respondent's second witness.

He told the Tribunal that his supervisor (the respondent's second witness) had told him to use the wrong cabling for the wiring of the fire alarms in the housing scheme. He completed the first two houses with his supervisor and was then left to complete the final nineteen. When the faulty wiring was located the inspector from DCC informed the appellant. He contacted his supervisor and was told he would sort it out.

On July 21st 2006 the appellant's supervisor informed him that there was no more work for him, they shook hands and the appellant left. The appellant gave evidence of loss. He had acquired another position two weeks after his dismissal at a lower rate of €1.17 per week.

On cross-examination the appellant said that he was aware of the Electro-Technical Council of Ireland Limited (ETCI) rules and had followed the instructions given by his supervisor. The

appellant told the Tribunal that he had worked on another housing scheme for the respondent after the incident with the faulty fire alarm wiring. After his dismissal three apprentices replaced him.

Determination:

Having heard the evidence adduced by both parties the Tribunal finds that no redundancy took place. The claim under the Redundancy Payments Acts, 1967 to 2003 fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 succeeds and loss having been established, the Tribunal finds that the appellant is entitled to four weeks gross wages, € 765.96 per week. However the Tribunal finds that the appellant secured work two weeks after his dismissal with a consistent loss of €1.17 gross weekly.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)