

EMPLOYMENT APPEALS TRIBUNAL

Appeals Of:

2 Employees
MN341/2006

Case No.

RP270/2006

RP278/2006

MN348/2006

against

Radley Engineering Limited, Killadangan, Dungarvan, Co. Waterford

under

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

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr. J. Killian
Mr. D. McEvoy

heard this appeal at Waterford on 13th June 2007

Representation:

Appellants: Cllr. Billy Kyne, 5 Parklane Drive, Abbeyside, Dungarvan, Co. Waterford

Respondent: Mr. Conor O'Connell, Construction Industry Federation, Construction House,
4 Eastgate Avenue, Little Island, Cork

The decision of the Tribunal was as follows:

It is the appellants' case that they are entitled to a redundancy payment. It is the respondent's case that the appellants were offered alternative employment and that they were not dismissed.

Appellant A's Case:

Appellant A sent his curriculum vitae directly to XXXX in 1998. In 1999 he was contacted by the respondent and offered contract maintenance work on site in XXXX. He accepted the offer and worked as a maintenance fitter there, servicing automated glass cutting machines. He was one of eight of the respondent's employees based in XXXX. For the entire period of his employment with the respondent the appellant was based at XXXX. Whilst the respondent was his employer it did not have a foreman on the site. Appellant A had very little contact with the respondent and dealt

mostly with the XXXX Crystal's maintenance manager when any issues arose.

When the respondent's employees based at XXXX enquired about a pay rise with the respondent's General Manager (GM) it was refused on the basis that XXXX employees were tied into a wage freeze.

Whilst it was known that the plant in XXXX was to close down for about two months before the actual closure the employees were expecting the respondent to have the maintenance contract with XXXX in Kilbarrack and the workers on the site expected they would move there with the respondent. GM met the respondent's employees (including Appellant A) some weeks before the closure of XXXX. Whilst GM told them at that meeting that the respondent had ongoing work in Kildare and Swords no offer in relation to it had been made to him. The Appellant could not recall making a telephone call to GM telling him that he would not take up work in Kildare or Swords. The issue of redundancy was raised but GM did not engage in any way about this. The appellant asked if alternative work was available either locally or in Cork and was told that none was available at the time.

About two weeks before the closure of XXXX Appellant A knew that the respondent had lost the contract for maintenance work at the XXXX plant in Kilbarrack. The respondent's workers in XXXX only got notice of the actual closure at the "eleventh hour" – they were told on the Wednesday that it was closing on the Friday but the foreman XXXX gave them an extra week. Appellant A found alternative employment with the contractor who won the contract in the XXXX plant in Kilbarrack and he commenced working there in late December 2005. He worked with the other contractor in the Dungarvan plant until Christmas 2005. He had worked removing the machinery from the Dungarvan plant. Appellant A agreed that he had contacted the union to make representations on his behalf with the respondent but GM was absent at the time due to illness.

Appellant A was not told at any stage that he could undergo a period of temporary lay-off and he did not hand in his notice. Appellant A's contract of employment with the respondent was silent on the issue of relocation.

Appellant B:

Appellant B worked as a welder/fitter and had been based in the respondent's workshop for most of his time with the respondent. He worked approximately four to five weeks annually on sites during shutdowns or times of high demand but he always returned to the workshop. He was asked to work in XXXX on a trial basis but he remained there over the final four years of his employment with the respondent until the plant closed in November 2005.

At the time of the closure of XXXX Appellant B was not offered a transfer back to the workshop despite the fact that the respondent was recruiting for the workshop around that time. GM met with Appellant B regarding the matter and he made a vague reference to work in Kildare and Swords. Appellant B told GM in a telephone conversation that he could not work in Kildare or Swords. Appellant B presumed that he would be going back to the workshop. After the closure of Dungarvan Crystal Appellant B received employment on a week-to-week basis.

Respondent's Case:

The respondent employs fitters, welders and general mechanical employees. GM ensures that customers' sites are properly manned. It is normal for the respondent's employees to travel in the course of their employment and workers are moved from site to site. A Registered Employment Agreement covers travel rates.

GM spoke to all of the eight employees being affected by the closure of XXXX and offered them work in Kildare or Swords. He also went to the XXXX site to meet them. He was not contacted by any of the eight employees in relation to his offer of redeployment.

Two weeks before the closure of XXXX, the foreman told GM that none of the employees were taking up the offer of redeployment. GM asked that the appellants to contact him directly. GM recollected a telephone conversation with Appellant A who told him he was not accepting the offer of work elsewhere. GM believed this meant that Appellant A was leaving the respondent's employment. GM told his accountant to calculate Appellant A's entitlements regarding holiday pay. At the time XXXX was closing the only available work the respondent could offer the appellants was in Kildare or Swords but now the company has work in Cork and Waterford.

In cross-examination GM stated that each employee must have known they were likely to be moved when they started work with the respondent but he agreed that the appellants' contracts were silent in relation to redeployment. Most of the respondent's employees travel on a Monday morning to a location, stay at that location for a week and travel back on a Friday. Many employees travel from Dungarvan to Kildare or Swords.

Determination:

The appellants' contracts of employment were silent on relocation. The Tribunal accepts that the respondent made an offer of work in either Kildare or Swords to the appellants. The Tribunal finds that this did not constitute an offer of suitable alternative employment. Therefore, the appellants are entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria:

Date of Birth:	22 August 1954
Date of Commencement:	1 May 1999
Date of Termination:	4 November 2005
Gross Weekly Pay:	€881.79

Date of Birth:	20 July 1976
Date of Commencement:	7 August 1992
Date of Termination:	4 November 2005
Gross Weekly Pay:	€716.04

Please note that a statutory ceiling limit of €600.00 applies to all payments from the Social Insurance Fund after the 1 January 2005.

The Tribunal awards Appellant A €455.13 under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. This sum being in respect of the difference in the pay he received during the three weeks over which he sustained a loss.

Appellant B received immediate employment at the same rate of pay as he had with the respondent. Accordingly he suffered no loss and the Tribunal is not making an award under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)