

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
Employee

CASE NO.  
RP247/2006

against  
Employer

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Mr. D. Hegarty  
Mr. J. McDonnell

heard this appeal at Cork on 25th July 2007

Representation:

Appellant(s) : Appeared in Person

Respondent(s) : Ms. Jennifer Cashman, Ronan Daly Jermyn, Solicitors, 12 South Mall, Cork

The decision of the Tribunal was as follows:-

#### **Appellant's Case:**

The appellant gave evidence. He told the Tribunal that the respondent company announced the forthcoming closure of the plant on the 20<sup>th</sup> December 2005. There would be a period of two weeks' "lay-off" in January and the plant may close within twelve months. The appellant took a decision to look for alternative employment. The respondent had said that all applications for redundancy would be considered on a favourable basis. The appellant felt that this would be an opportunity to get redundancy payment based on his eleven years' loyal service. The respondent's response to his request for redundancy was that he had not been dismissed and therefore not made redundant. This contradicted the company announcement. There was no replacement employed to fill his position when he left but a replacement was reallocated internally. The appellant trained his replacement in his duties prior to his departure. No other employee had received redundancy up to the time of the appellant's departure.

#### **Respondent's Case:**

A director who was the person responsible for the wind down of the company gave evidence. She told the Tribunal that the company ceased production in December 2006. Three members of staff remained at that stage. In December 2005, the decision was taken to close for two weeks in January 2006 as work was slow. Employees received written notice of this decision. The plant was losing money and was going to cease operations but at this stage they did not have a firm date for closure.

The employees were not put on firm notice. The appellant approached a manager and said he was leaving for another position. His job was not redundant at that stage so his application for redundancy was refused. The appellant's replacement was sourced from the quality control section of the plant. He was no longer required for quality control as that area had become quiet. The replacement was trained in by the appellant. The criteria for redundancy was based on assessing whether the job could be done without. No employee received redundancy prior to November 2006.

**Determination:**

Having considered the evidence in this case, the Tribunal took into consideration the fact that all employees were notified of the respondent's intention to cease operations. While the closure notice had been given, it was anticipated to take twelve months to implement. Employees who received statutory redundancy prior to the closure did so because they were on temporary lay-off in December 2005 and were the most junior of employees. The appellant was not in this position and voluntarily tendered his resignation. The Tribunal determines that the appellant pre-empted the redundancy situation and left his employment before a redundancy situation arose. Accordingly, the claim made under the Redundancy Payments Acts, 1967 to 2003, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)