

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
Employee

CASE NO.  
RP131/2007

Against

2 Employers

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms E. Daly B.L.

Members: Mr D. Morrison  
Mr G. Hunter

heard this appeal at Donegal on 2nd May 2008

### **Representation:**

Appellant : Ms. Dolores Tiernan, Development Manager, Citizen Information Service,  
Bridge Street, Drumshanbo, Co. Leitrim

Respondent : Company Rep

The decision of the Tribunal was as follows:

### **Appellant's Case**

The appellant commenced employment as a mechanic with the respondent in November 2003. He was employed on a continuous full time basis in that capacity up to September 2006. His employer furnished him with a note dated 15 September 2006 informing him that his working week was reduced to a three-day week. He had verbally received that news a week earlier and short time work started week beginning 11 September. However due to a day's leave the witness only worked two days that week. He subsequently worked two days week commencing 18 September and did not work any days for the following week. He was unable to accept the offer of one day's work on 6 October due to ill health. Towards the end of his sixth week on short time the respondent offered him employment with another employer for a limited duration. Again the appellant felt unable to accept that offer not least on health grounds. The appellant submitted a medical certificate to the respondent around that time which declared him unfit for work until 20 October 2006.

During this period the appellant became the recipient of social welfare payments as a result of his loss of employment. As part of this process the witness called at the respondent's premises every Wednesday where the employer marked and stamped his social welfare form. That exercise stopped on 25 October as the employer added the words *work but out sick* to their stamp on that form. That day the appellant and the proprietor "had words" as he sought a redundancy declaration from the respondent. The proprietor told the appellant that he was not entitled to it. He then presented the respondent with a written application, dated 2 November 2006, for a redundancy payment. The witness

had terminated his employment on 25 October. The appellant reasoned that he had been on short time at that stage in excess of six weeks and was now entitled to apply for a redundancy payment. Since the employer had not offered him continuous work for a minimum of thirteen weeks during that period or subsequent to his application for redundancy he felt he had an entitlement to redundancy.

In early October the appellant removed his work tools from the respondent's premises as he saw that they had been interfered with and wanted to safe guard them.

### **Respondent's Case**

The respondent encountered some trading difficulties in September 2006 when he lost a contract. As a consequence the firm placed the appellant on short time. The proprietor described him as an excellent worker and prior to this event their working relationship was "good and honest". That relationship adversely changed in the weeks following the commencement of the appellant's short time work. The respondent was adamant that the appellant was offered a week's work with another company but under their control in early October. While the respondent also maintained it offered a further week's work to the appellant on 25 October the proprietor accepted that this offer did not extend beyond that time. He was unable to offer or guarantee him more work at that time, as the restored contract was not yet "on stream". On 9 February 2007 he wrote to the appellant and told him his position was still vacant and the witness told the Tribunal that he had work for the appellant at that time.

Despite offering the appellant work on 25 October the proprietor was shocked to hear him ask for a redundancy payment. The appellant "didn't want to know" as he insisted on that payment and from that date onwards did not call at the premises. The witness regarded the appellant's behaviour as amounting to a resignation and reasoned the application for redundancy was based on a "quick buck" attitude. The respondent conceded that he neither issued the appellant with a contract of employment nor presented him with a counter claim to his letter of 2 November 2006.

### **Determination**

The Tribunal finds that the notice in writing under Section 12 of the 1967 Redundancy Payments Act was compiled with by the claimant. There was a failure to offer 13 weeks work under Section 13 of the 1967 Act. Consequently, the Tribunal finds the claimant was entitled to be considered as having been made redundant. Accordingly, the Tribunal awards a lump sum payment under the Redundancy Payments Acts, 1967 to 2003, based on the following criteria:

Date of Birth:	6 February 1951
Date of Commencement:	10 November 2003
Date of Termination:	25 October 2006
Gross Weekly Pay:	€ 400.00

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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