

**EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL OF:**

Employee

against

Employer

under

**CASE NO.**

RP247/2008

MN283/2008

**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: Mr B. Garvey BL

Members: Mr. T. O'Sullivan  
Mr F. Barry

heard this appeal at Dublin on 27th June 2008

Representation:

Appellant(s): In person

Respondent(s): Company Representative

The decision of the Tribunal was as follows: -

**Respondent's case:**

In his sworn evidence, the managing director (*hereinafter referred to as MD*) for the respondent confirmed that the company has been operating for over four years.

MD said that due to a downturn in the market, a lack of work and debts owed to the company, four employees including the appellant were informed on the 22 February 2008 that they were being let go. The project manager informed the appellant of the termination of his employment. MD said that the project manager had also told the appellant that if the company got more work, he would be the first to be called back. While using the word "redundant", MD maintained the appellant had been laid off. He said that the use of the word "redundant" was technically wrong.

MD conceded that the appellant had been entitled to two weeks notice of the termination of his employment but had only received one week. He said that he had not been aware of this at the time the appellant had been given notice and he confirmed that he was now willing to pay the extra week

that had been due.

Copies of emails that had exchanged between MD and the appellant were opened to the Tribunal.

On 11 March 2008, MD received an email from the appellant where he sought one weeks pay for the balance of his minimum notice. In this email, the appellant also said that it had come to his attention that he was entitled to a redundancy lump sum.

On 12 March 2008, MD replied to the email saying that he would look into it and revert back. On the same date and in a second email to the appellant, MD offered the appellant his job back as work had been secured, that no prejudice would be shown to the appellant by his returning to work, and it requested him to reply and confirm when he could resume.

On 13 March 2008, MD received an email reply from the appellant, and by way of reply, MD wrote that the appellant should come to the site on the following Monday.

On 18 March 2008, MD received an email from the appellant requesting that contact be made to discuss the job offer, and by reply of the same date, MD requested the appellant to return to site, that he was free to start at any time.

On 19 March 2008, MD received an email from the appellant saying the he – the appellant – was under financial pressure. MD's email reply of 20 March 2008 stated that he was too busy to speak to the appellant but the appellant was free to start his job any time that suited him.

MD explained that during this time, he was in Court dealing with the debts that were owed to the company.

During cross-examination, MD rejected the appellant's claim that he – the appellant – had not received the last three emails from MD. He said he had delivery receipts for the emails in question, and even if it were true that the claimant had not received the last three emails, the appellant was aware that his job had been offered back to him. In reply to this, the appellant told the Tribunal that he had not wanted his job back but he was under financial pressure and his girlfriend had made him take it.

Answering questions from the Tribunal, MD said that in February 2008, he had approximately 12 or 13 employees but now due to the decline, he had two electricians, two apprentices and three on temporary layoff. No one had been made redundant prior to February 2008. MD confirmed that if the company secures work, he would have had no difficulty in re-employing the appellant. He also stated that the project manager was fully aware that the appellant had been offered his job back.

### **Appellant's case:**

In his sworn evidence, the appellant said everything had been going grand until, on 22 February 2008, the project manager called him to the office and put it to him straight that there was no more work and he was given a week's notice. The project manager had not told him that he would be called back if the company secured more work. He worked the one weeks notice but subsequently learned he had been entitled to two weeks notice and a redundancy lump sum.

The appellant communicated with MD on 11 March 2008, by email only, because MD would not answer his telephone. In the email of 11 March, the appellant stated he had been entitled to two weeks notice on the termination of his employment, and not one week as he had been given. He

also referred to redundancy and MD was asked to reply within 14 days.

In relation to the email of 12 March 2008 from MD, the appellant said that he wanted to think about it and consider his position because MD would hold things against him. He said that the last email that he received from MD was the one dated 13 March 2008. In relation to not showing up on site on the following Monday, the appellant said that when he failed to speak to MD on the telephone, he phoned the project manager who knew nothing about the job offer. Because of this, he – the appellant – was not going to show up on site.

The claimant also stated that he never received the last three emails from MD and suggested that there was a discrepancy in the email address that had been used to send these emails to him.

During cross-examination, the appellant said that he would have taken the job had it been offered but he had not received the last three emails and the project manager had not offered him his job back at the time of the termination of his employment. Rejecting this, MD stated that all emails had been sent to the claimant by clicking “reply” and the project manager had been aware the appellant had been offered his job back because all emails had been copied to him. MD said that he had not telephoned the claimant but had put everything on paper to protect himself.

Responding to the Tribunal’s questions, the appellant said he had not shown up on site because he had not been able to speak to MD on the telephone to ensure that the job offer was secure. He said that he had wanted to get his head around the job offer because he was afraid that MD would treat him differently and hold a grudge because of the claims he had made. He also said that because of that, he did not want the job back but that his girlfriend had told him to take it.

**Determination:**

The Tribunal is satisfied that the appellant was on temporary layoff and was subsequently offered re-employment which he did not accept. In his evidence, the appellant conceded that re-employment had been offered to him after he had been laid off. The Tribunal therefore finds that the appeal under the Redundancy Payments Acts, 1967 to 2003 fails.

The Tribunal accepts that the appellant was entitled to an additional weeks notice on the termination of his employment and the respondent conceded this in his evidence. The appellant’s claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 therefore succeeds and the Tribunal awards the appellant €640.00 being the equivalent of one weeks pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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