

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL OF:

CASE NO.

Employee

RP303/2008

against

Employer

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr C. McHugh  
Ms M. Finnerty

heard this appeal at Dublin on 24th July 2008

Representation:

\_\_\_\_\_

Appellant :

Mr. Joe Donnelly, Divisional Organiser, Mandate Trade  
Union, O'Lehane House, 9 Cavendish Row, Dublin 1

Respondent :

Mr Vincent Shannon, Shannons, Solicitors, Twenty Nine Main Street,  
Opposite AIB Bank, Swords, Co Dublin

The decision of the Tribunal was as follows:-

**Respondent's case:**

The respondent did not attend the hearing however the legal representative outlined to the Tribunal the background to the case.

On behalf of the respondent the legal representative stated that this was not a valid redundancy. There was a dispute between the respondent and the appellant in relation to performance. A letter was issued to the appellant in June 2002 in respect of verbal warnings, however the appellant refused to sign the letter. At that time the appellant had two years service. The appellant then went on sick leave for six years and the respondent felt he was coming to the end of his working career and had come to the conclusion that he had no intention of returning to work. The appellant wrote to the respondent stating he was fit to return to work and was taking the Monday off ( this was his day-off prior to going on sick leave). When the respondent received this letter they said there was no more work for him due to the economic downturn.

**Appellant's case:**

The appellant in his evidence told the Tribunal that he commenced his employment with the respondent on 4<sup>th</sup> January 2000. He went out on sick leave on 21<sup>st</sup> June 2002 and sent in medical certificates every week. He received one or two letters from the respondent enquiring about his illness and asked that he let them know when he would be returning. On 17<sup>th</sup> January 2008 he wrote to the respondent stating that he was fit to return to work and as he had received no response he rang the respondent on 4<sup>th</sup> February 2008 however since the respondent was on holidays he was told to ring his son in his absence. When he rang the son he was asked to come in the following day. He was told by the son that there was no work for him and they had to let staff go. This was confirmed in writing on the same day. He was also told he would have to see the respondent's doctor but that nothing could be done until the father had returned from holidays. He then received another letter which was undated, from the respondent confirming the down-turn in business and that they no longer had a job for him. In response to letter dated 5<sup>th</sup> March 2008 from the appellant's union representative requesting a meeting, the respondent confirmed that there was nothing further to add and the situation had already been outlined in their previous correspondence. The appellant then requested his P.45.

In cross-examination witness stated that he had an impeccable record with his former employer with whom he had worked nineteen years. The respondent complained about his sales but did not give him a chance to defend himself. The incident in relation to the complaints against him brought on the stress from which he suffered for six years. He was claiming Social Welfare payments during the six years.

**Determination :**

The Tribunal found it surprising that the Respondent chose not to attend the hearing with the result that no direct evidence was presented on behalf of the respondent. The Tribunal is even more surprised by the fact that the respondent tolerated the claimant's absence on sick leave for six years.

The Tribunal determines that the Appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts 1967 to 2003 based on the following:

Date of birth:	28 January 1942
Date employment commenced	04 January 2000
Date employment ended	14 March 2008
Gross weekly pay	€531

The Tribunal notes that the appellant was on sick leave from 21 June 2002 to 04 February 2008. He was claiming Social Welfare payments during the period of his sick leave and this weekly amount should be deducted from his gross weekly pay in calculating his redundancy entitlement for this period. This Determination is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

