

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP154/2007

against

Employer

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. P. Clarke

heard this appeal at Sligo on 4th April 2008 and 16th July 2008

Representation:

Appellant: Ms. Carol Ni Chormaic, Patrick Duffy, Solicitor, Carrick-On-Shannon, Co. Leitrim

Respondent: Ms. Anne Hickey, Solicitor, Wine Street, Sligo

The decision of the Tribunal was as follows:

Appellant's case:

The appellant gave evidence that he worked as a mechanical fitter for the company for 20 years. On 24 November 2006 he spoke to the Director (SC), who told him he was laying him off. He was laid off from 28 November 2006. He kept asking the company when they would take him back. On 5 March 2007 SC offered him a job in Ballymote for eight weeks on a three day week, but that there could be no guarantees after that. He said this was not suitable, that he wanted full-time work. He understood that it was only eight weeks work offered with no guarantees after that. He sent an RP77 to the company but received no response, so he lodged a T1A. He received no contact from the company from 14 March 2007 to 6 November 2007. He started work as a mechanic on 16 April 2007 with another company.

He agreed that TK had also been laid off at the same time as himself. The company had been a

good employer. He denied that SC had given him the expectation that he would eventually return to full-time work, but that he had only been offered eight weeks work with no guarantees after that. When asked if he wanted redundancy, he said he would be better off being made redundant, as this was the second time that he had been laid off in two years.

Appellant's closing submission:

Sections 13(1) and 13(2) of the Redundancy Payments Acts, 1967 to 2003 apply, 13(2) is very specific. Only eight weeks work was offered, but the employer must offer at least 13 weeks. It was reasonable of the appellant to believe that he was only offered eight weeks.

Respondent's case:

The Director (SC) gave evidence that in November 2006 he had to lay off three Employees, the appellant, TK & TM. He said that he had great respect for the appellant, but that he had to lay him off. He paid him extra money at Christmas that year even though he wasn't working. He told him on 5 March 2007 that he had a job for him in Ballymote for eight weeks, on the basis of a three-day week, but that the job would continue after that. He said that this was not clarified to the appellant in the letter sent to him on 6 March 2007, but he did make it clear to him when they met. He denied that the offer was only for eight weeks, that they would see how it went after the initial period, but that he could give no guarantees. The appellant said he preferred redundancy. He said that he did not replace the appellant when he left, but that other employees did his work. He still had a position for him.

He admitted that he could offer the appellant no guarantees but that he was taken aback when he asked for redundancy. He agreed that he must have received the RP77 from him, but said he didn't contact the appellant because he was waiting for him to contact the company. When asked if had received any advice on Redundancy prior to this, he answered no, nor had he been aware that an employee could decide to claim redundancy independently of his employer.

Respondent's closing submission:

The appellant wanted redundancy, he had job offers elsewhere and wanted to go. The company says that there is still an offer of a full-time post. The Tribunal has discretion to look at all the facts in the case per section 11(2) of the Redundancy Payments Acts, 1967 to 2003. SC could not give any guarantee, but the expectation was that the appellant would return to full-time work in due course. He was not entitled to claim redundancy.

Determination:

Because the company Director admitted there was no guarantee of 13 weeks continuous employment being offered to the appellant, and that the letter of 6 March 2007 only specified eight weeks, section 13(1) of the Redundancy Payments Acts, 1967 to 2003, applies in this case.

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

Date of Birth: 6 March 1956

Date employment commenced:	15 September 1988
Date of lay-off:	28 November 2006
Date employment ended:	28 November 2007
Gross weekly salary	€486.00

(The employee was laid off from 28 November 2006 to the date his employment ended).

This award 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)

