

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

RP460/2008

against

Employer

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. B. Kealy  
Mr. S. O'Donnell

heard this appeal at Dundalk on 25 September 2008

#### **Representation:**

Appellant:

Mr. Thomas Faulkner, UCATT, UCATT House,  
56 Parnell Square West, Dublin 1

Respondent:

Managing Director

The determination of the Tribunal was as follows:

#### **Determination:**

The appellant worked for the respondent as a painter from 1994. The employment was uneventful until 13 March 2008 when the appellant and the managing director (MD) had a conversation in the respondent's paint shop. It is common case that the appellant told MD that he was not feeling well. The appellant's position is that he told MD that he did not know for how much longer he could continue to work for the respondent. The respondent's position is that the appellant said to MD "maybe it was time for me to depart". His position is further that the appellant told him that he was suffering from a medical condition. The claimant's position is that at this time he had not consulted a doctor about the matter and the condition was not diagnosed until the following month.

The respondent's position is that MD concluded that the appellant wished to retire and decided that the end of the following week, which was the start of the Easter holiday, was a natural break for the appellant to retire at. On 20 March 2008 the appellant attended a lunch, described as a retirement lunch by MD, attended by eight or nine staff from the respondent's office but no other members of

the workforce. The appellant was invited to this lunch at short notice on 20 March 2008. His position is that he spoke to MD on the morning of 20 March 2008 and told MD that he would speak to MD again after Easter by which time he would have consulted his doctor. It is common case that at this meeting MD told the appellant that Easter might be a good time to leave. The appellant took this to mean that he was being made redundant. This view was reinforced when, at the conclusion of the lunch, MD thanked him for his service and bade him farewell.

The appellant was the only painter employed by the respondent and has not been replaced. MD told the Tribunal that the downturn in work from which the respondent was now suffering only kicked in some three months after the appellant left the employment.

The Tribunal is not satisfied that, in the conversation of 13 March 2008, the appellant told MD of his intention to retire. That being the case the Tribunal cannot find that the termination of appellant's employment was due to retirement. Having carefully considered all the facts in this case the Tribunal is satisfied that the appellant was dismissed by reason of redundancy. It follows that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria.

Date of Birth	16 December 1938
Employment commenced	8 July 1996
Employment ended	20 March 2008
Gross weekly pay	€771-37

It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week. 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)