

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:  
2 Employees

CASE NO.  
RP126/2008  
RP127/2008

against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr. M. Forde  
Ms H. Kelleher

heard this appeal at Waterford on 30th October 2008

#### **Representation:**

Appellants : Michael Taheny, B.A.T.U., Connolly Hall, Summer Hill, Co. Waterford

Respondent : Conor O'Connell, Construction Industry Federation, Construction House,  
4 Eastgate Avenue, Little Island, Cork

The decision of the Tribunal was as follows:

The Applicants in this case commenced employment with the Respondent Company on the 7<sup>th</sup> of March 2005 and were employed up to the 24<sup>th</sup> of August 2007. At the time that they left his employment they was earning €1500.00 gross per week. They were employed as bricklayers.

The Applicants told the Tribunal that before the builder's holidays in 2007 they were approached by their foreman who told them that they should be looking out for other work because work on the site that they were engaged on at that time was coming to an end. The Applicants regarded themselves as having been put on protective notice. The Applicants obtained offers of work on another site from another employer and they advised their foreman of this sometime after the holidays.

On the 4<sup>th</sup> of August 2007 the Applicants had a meeting with the Managing Director of the Respondent Company on the site. The Applicants understood from the Managing Director that there was only one week's work left on the site and that they would be on temporary layoff after that. They opted to take the alternative employment, which at the time promised them approximately 13 weeks work. They asked the Managing Director could he guarantee them 13 weeks work and the Managing Director said that he could not. In the circumstances they left his employment to work for an alternative employer on another site.

The Managing Director gave evidence on behalf of the Respondent and largely agreed with the evidence of the Applicants except that his recollection was that he told the Applicants that there would be 3 or 4 weeks work on the site. He said that he gave the Applicants two options, one was to continue working for as long as the work lasted and that they may then be put on temporary layoff and that if nothing further came they would be made redundant. The alternative was to leave the job now but he made it clear to the Applicants that if they left the job they would receive no redundancy payments.

This Division of the Tribunal has been referred to a Decision of the Employment Appeals Tribunal in case number RP202/2007, which was delivered on the 11<sup>th</sup> of March 2008.

The Tribunal is satisfied that the Applicants in this case had for their own financial reasons to weigh up the amount of work that would be available from the Respondent as against the amount of work that might be available to them with an alternative employer and they opted to leave his employment and take up employment else where. The Applicants was neither dismissed nor laid off for 4 consecutive weeks and consequently the Tribunal can make no finding in their favour under the Redundancy of Payments Acts 1967 to 2003. Consequently the applications appeals under the Redundancy Payments Acts, 1967 to 2003 are dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

