EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:	**CASE NO.**
Employee	RP618/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. B. Garvey BL

Members: Ms. J. Winters
Mr. B. McKenna

heard this appeal at Navan on 5th December 2008

Representation:

Appellant(s): In person

Respondent(s): In person

The decision of the Tribunal was as follows:-

Preliminary point:

At the commencement of the hearing, the appellant confirmed to the Tribunal that the only issue before it was his appeal for redundancy.

Respondent's case:

In sworn evidence, the contracts manager confirmed that he had jurisdiction of the day-to-day running of the respondent's sites, and the employees including the appellant.

On Wednesday 18 July 2007 at 2.30pm, he called to the site in Dublin where the appellant and two others were working. He told the three employees about the slow-down in the respondent's business and, on the instruction of the respondent's owner, he advised the employees that if they secured alternative employment over the holiday period, they should take it. The last working day was the Friday of that week and then the holiday period began.

The contracts manager did not construe this advice as termination of employment. It was only a "heads-up" about the possibility that all jobs could be gone, including his own, after the holiday period. The appellant got annoyed at hearing this, threw his work-telephone at the contracts manager and walked off site to the company van, where he stayed until the end of the day. The shift ended at 4.00pm.

The other two employees worked the next two-day (Thursday and Friday) but the appellant did not return. The appellant had terminated his own employment by walking off site. Employees on the respondent's other sites did not see the advice about accepting alternative employment if same was found over the holiday period, as the termination of their employment.

In cross-examination, the contracts manager said that the mobile telephone was not handed to him but thrown at him. He had not reported the incident because he considered that it was just one of those things and that the appellant was aggressive and blowing off steam.

When put to him, the contracts manager could not recall telling the appellant that the pay packet he gave the appellant on the 18 July would be his last one.

Replying to Tribunal questions, the contracts manager confirmed that the respondent had worked on the Dublin site for two weeks and finished there that Friday. Work would have been available to the appellant had he returned after the holiday period. The other two employees who had been working with the appellant on the 18 July had remained in the respondent's employment until a few weeks ago. Some of the employees had taken offence at the advice about seeking alternative employment but plenty of the employees had returned and there had been work for them. The appellant took the advice the wrong way.

Appellant's case:

In sworn evidence, the appellant confirmed that the contracts manager came on to the Dublin site on the 18 July between 3.20pm and 3.30pm.

The appellant and his two colleagues had been working on a roof. The contracts manager had first spoken to the others and then to the appellant. He gave the appellant his wages and said that they were his last. The appellant asked why and the contracts manager had replied that it was because of the last two months including a job on a site in Navan. The appellant referred to this job as having gone "pear-shaped".

After checking his pay packet, the appellant discovered that he had received one weeks pay and one weeks holiday pay. However one weeks pay had been stopped in lieu of days owed to the respondent. The appellant agreed that he owed the respondent for three days. He enquired as towhy a week was being stopped. The contracts manager had replied that the respondent's owner hadpresumed that he – *the appellant* – would not be at work on Thursday and Friday.

The contracts manager had asked for the return of the company telephone and the appellant had erased his messages before handing the telephone back. He had no reason to throw the telephone at the contract's manager. He left the roof area at 3.50pm and went to the company van where he telephoned his wife on his own telephone to tell her what had happened. On the journey home, his colleagues had sympathised with him. The appellant had never received either verbal or written warnings from the respondent.

Replying to the Tribunal, the appellant confirmed that he received wage slips from the respondent and was paid his wages directly in to the bank. He confirmed that he received his correct wages on the 18 July and the 26 July. His final wages, due on the 3 August, were stopped.

Determination:

Having carefully considered all of the evidence adduced, the Tribunal unanimously find that the respondent did not make the appellant redundant and a redundancy situation did not exist on 18 July therefore the appeal under the Redundancy Payments Acts, 1967 to 2003 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)