

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
Employee

CASE NO.  
RP442/2008

Against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr J Browne  
Ms P Ní Sheaghda

heard this appeal at Wicklow on 1<sup>st</sup> October 2008

#### **Representation:**

Appellant: Mr Michael Browne, SIPTU, Barrack Street, Co Carlow

Respondent : Ms Rebecca Graydon BL instructed by  
Malcomson Law, Solicitor, Court Place, Carlow Town, Co Carlow

The decision of the Tribunal was as follows:

The appellant had been employed by the respondent as a production operative on the dispatch nightshift for a period of approximately seven and a half years. There was no dispute between the parties as to whether the position for which he had originally been employed had ceased. It was accepted by the respondent that as a result of technological change automatic processes had eliminated the purpose of the original shift and that the dispatch nightshift on "Chill D" was discontinued.

It was the respondent's case that the appellant had been offered alternative work and that the offer constituted suitable employment in relation to the employee for the purposes of the Redundancy Payments Act and that the appellant had unreasonably refused the offer.

The four employees affected by the change had been offered three different options as to alternative employment within the factory. The appellant had rejected all three alternatives. The Tribunal is satisfied that there was no material issue of fact in dispute between the parties and the only matter to be resolved is whether the refusal to accept each of the alternatives was unreasonable.

All three alternatives involved working in the same factory as the appellant had worked before, albeit in different parts of the factory. Two of the alternative employments involved working

significantly different hours. The third alternative employment involved working the same hours as previously but as a cleaner rather than as a production operative.

The basic rate for the third alternative employment was less than the appellant had been earning in his original position, however the respondent claimed that the total remuneration, including bonuses, would be the same as before. The appellant pointed out that the bonus element of pay was not guaranteed with quite the same absolute certainty as having that part of remuneration due as basic pay. There appeared to be no great controversy between the parties in relation to these issues and the Tribunal accepts both parties' positions.

The Tribunal finds that the appellant, who had been employed to work a nightshift, was not unreasonable in refusing to accept the first two alternative employments as they involved working quite different hours.

The Tribunal further finds that the appellant was not unreasonable in refusing to accept the third alternative employment, as the nature of the work offered was as a cleaner and was materially different to that of a production operative for which he had originally been employed.

The Tribunal has found that the refusal by the appellant of all offers of alternative work by the respondent was not unreasonable for the reasons given above and therefore it is unnecessary for the Tribunal to state a view in relation to the issue of remuneration. The issue of remuneration appears to have been of lesser significance and presumably could have been resolved by the parties by means of red circling, had they wished to do so.

The Tribunal finds 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	21 <sup>st</sup> July 1952
Employment commenced	18 <sup>th</sup> September 2000
Employment ended	27 <sup>th</sup> March 2008
Gross weekly pay	€795.77

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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