

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP125/2008

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. M. Forde
Mr D. McEvoy

heard this appeal at Waterford on 4th November 2008

Representation:

Appellant :

Mr. David Lane, SIPTU, 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:-

Appellant's case:

The appellant worked for the respondent for approximately two and a half years. On the week before the summer holidays in 2007 he and his colleagues were told by the foreman that work was getting slack and they could look for other work. After the holidays they were asked if they had

looked for the work. The managing director (MD) told them they were put on protective notice. On or about the 16th August 2007 when the MD was asked if he could guarantee thirteen weeks work he stated that he could guarantee one week. The appellant and his colleagues kept enquiring about the work situation and the last time they made contact was in January 2008. They got other work with the Waterford Institute of Technology (WIT) the Monday after finishing with the respondent.

In cross-examination witness stated that on Tuesday 21st August 2007 he and his colleagues told the MD they had been offered another job and asked the MD if he could guarantee thirteen weeks work and he could not do so. The houses they had been working on were almost finished. They did not receive form RP9. They were guaranteed three months work in WIT whereas the respondent could only guarantee one week. Witness could not recall two options being given by the respondent on the Friday 24th August 2008.

Respondent's case:

The managing director (MD) told the Tribunal that he is the third generation of the family in this building contractors business. When the appellant worked with the company they had twenty-three employees and they now have ten. He met with the workers on site and they are generally kept in the loop regarding the work situation. In the summer of 2007 the appellant and his colleagues were told by the foreman they could see for themselves that work was slackening off and they should keep an eye out for other work. In general conversation he asked the lads after the holidays if they had "any joy", as to other work. They had secured work in the local college and had to start the following Monday. On Tuesday 21st August he told the appellant and his colleagues that there was three or four weeks work but he could not guarantee beyond that. On Friday when the foreman told him that the appellant and his colleagues were looking for redundancy witness gave them two options. One of the options given was that there would be three to four weeks work on the current site, if no other work was available after that they would be placed on temporary lay-off and if there was no work at that point he would then pay redundancy. The second option was that if they wanted to leave before work had run out they would not be paid redundancy. Having been told to go away and think about the two proposed options witness received a telephone call from one of the appellant's colleagues stating they were taking up the job at WIT as they were being offered work until Christmas. At the time the appellant and his colleagues left another crew of workers stayed on until Christmas and if the appellant and his colleagues had stayed on the work would have finished in possibly half that time. Two years previous when there was a lull in the work he gave the workers, including the appellant the temporary lay-off form RP9.

Determination:

On the evidence of both the appellant and the respondent, the respondent was unable to furnish a guarantee of continuity of work to the same extent as the work available to the appellant with another employer. Based on this the appellant left the respondent's employment and commenced with another employer the following Monday. The Tribunal therefore finds there was no dismissal

on the basis of redundancy and the appeal under the Redundancy Payments Acts, 1967 to 2003 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

