

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

- appellant

CASE NO.

RP481/2008

against

Employer

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr P. Pierson

Ms H. Henry

heard this appeal at Galway on 3rd February 2009

Representation:

Appellant(s) : In Person

Respondent(s) : Mr. Stephen Sands, Construction Industry Federation,
Construction House, Canal Road, Dublin 6W

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant gave direct evidence that he worked for the respondent company as a labourer for over 7 years. He lives in North East Galway and during his time working for the respondent he worked in Counties Galway, Mayo, Sligo, Longford and Roscommon. Sligo was the furthest distance he worked away from his home, it being 52 miles from his home. He only stayed away from his home overnight on two occasions during the 7 years working for the respondent. He was also a part-time farmer and his wife worked part-time.

In July 2007 following the completion of work on a site in Co. Galway his employer informed him that his next place of work was to be Ennis, Co. Clare. The witness explained that it would not be possible for him to work in Ennis as it was 72 miles from his home and he was not prepared to travel that distance. He requested that he be provided with work closer to his home but was informed by his employer that the work in Ennis was the nearest on hand at that time. He then requested a redundancy payment but did not receive same as work was being made available to him in Ennis. He received his P45 from the company on the 13 August 2007.

The witness gave further evidence that 6 months prior to this, the company made a redundancy payment to an employee who refused the offer of work on a site in Co. Limerick when his work

had been completed on a site in Co. Galway .The company also had work ongoing in Claremorris Railway Station in July 2007 but the witness was not offered the opportunity of working there.

Under cross examination the witness confirmed that he received a letter on the 20 July 2007 from the company stating that work was available for him in Ennis. He agreed that he was always paid “country money” when he worked away from home. This amounted to €160.00 per week and was tax free.

Respondent’s Case

The first witness for the respondent gave evidence that the company increased its workforce from 400 to 550 employees during the year 2007. The company endeavours to place employees in employment as close as possible to their homes. The company adheres to the Registered Employment Agreement Construction Pay and Conditions and “Country money” is paid to all employees in line with this agreement including the appellant. The company hired a new employee to replace the appellant when he finished working for the company.

Under cross examination the witness confirmed that the company were operating at a site in Claremorris in June 2007. The duration of this project was approximately 3 months and this project had commenced 5 to 6 weeks prior to the completion of work on the Co. Galway site where the appellant had been working. He confirmed that only one employee out of a total workforce of 550 had been made redundant in 2007 and this employee had been based in Navan, Co. Meath. He was not in a position to confirm or deny if an employee had received a redundancy payment following refusal to move to a site in Co. Limerick in 2006.

The second witness for the respondent gave evidence that he is a senior foreman with the company. He informed all employees, three weeks prior to the completion of work on the site in Co. Galway in July 2007 that their next place of work would be Ennis. Two employees, one of whom was the appellant requested work nearer their homes but no such work was available.

Determination

The Tribunal is satisfied having heard all the evidence that a genuine redundancy situation did not exist. Under the Registered Employment Agreement Construction Pay and Conditions there is no cap on the travel distance that employees are expected to travel to attend work, once “country money” is paid by their employer. In this case there was nowhere else nearer the appellant’s home that the employer could have located him and furthermore there was evidence that the appellant was replaced. Therefore the claim under the Redundancy Payments Acts 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

