

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE -*appellant*

CASE NO.  
RP1777/2009  
WT671/2009

against  
EMPLOYER -*respondent*

Under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr R. Murphy  
Ms. E. Brezina

heard this appeal at Dublin on 25th February 2010

#### **Representation:**

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Appellant: Mr. Blazej Nowak, Polish Consultancy Enterprise, 19 Talbot Street, Dublin 1

Respondent: In Person

The decision of the Tribunal was as follows: -

#### **Appellant's Case**

The appellant was informed by letter dated the 19<sup>th</sup> of March 2009 that he was being put on 10 weeks lay-off effective immediately. The appellant approached the respondent after 10 weeks and asked if there was any work available and was told there was not. Later that day the appellant received a phone call from the respondent informing him there was work available so he returned to work in June 2009.

The appellant worked for 2 weeks in Crumlin, then 2 days in UCD, had a break of 4 weeks then worked 3-4 days in the Mater Private. The appellant claimed Social Welfare benefit for the days of the week he was not employed.

The appellant served the RP9 form on the 27<sup>th</sup> of July 2009 after his request for full-time hours with

the respondent was turned down because the work was not available. The respondent attempted to contact the appellant by phone after he received the RP9 form. The appellant did not speak to the respondent as he was waiting for the reply to the RP9.

The appellant received the letter requesting him to contact the respondent regarding his “behaviour” but had no idea what the letter was about. The respondent’s son told the appellant he would be paid when he wasn’t working instead of being made redundant. The appellant was aware that the respondent ‘maybe’ had a big job coming up but it was not definite.

#### *Cross Examination*

The appellant was paid for the weeks he did not work in July. The respondent told the appellant that a big contract might be coming up and if it was he would be put back on full-time work. The appellant did not reply to the letter from the respondent requesting him to contact them as the relationship with the respondent had broken down. The appellant did not receive his last five payslips. The appellant did not check his bank account so did not realise he had been paid for the last few weeks when he was not working.

#### **Respondent’s Case**

The respondent has never paid anyone for not working and had no agreement with the appellant to do so. The staff were put on lay-off because the respondent had no work available. After the lay-off period the appellant worked for a further 4-5 weeks on short-time. The respondent could not contact the appellant when work became available. The respondent did not understand the RP9 form to respond to it. The respondent had made the appellant aware that there would be work in the future.

#### *Cross Examination*

The respondent tried to ring the appellant after receipt of the RP9 after the August Bank Holiday weekend. The appellant was still in employment when he served the RP9 form. The respondent wrote to the appellant requesting he contact the office, as they did not understand the RP9 form. The appellant worked for 3 days on short-time and claimed social welfare for the remaining 2 days of the week.

#### **Determination**

The Tribunal accepts that the appellant was on short-time from the time he was brought back from lay-off. The requirement of the legislation does not entitle the appellant to serve the RP9 unless he is on lay-off or the short-time working hours are less than 50% of his normal working hours, in this case it appears to the Tribunal that the appellant was working more than the 50%. In the circumstances the Tribunal finds that the appellant was not entitled to serve the RP9 on his employer and accordingly the appeal under the Redundancy Payments Acts 1967 to 2007 fails.

The Tribunal finds that the appellant is entitled to his statutory Public Holiday entitlements, therefore awards the appellant the sum of €1,100.00 being the equivalent of 7 days pay under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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