

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
Employee - appellant

CASE NO.
RP579/2007
MN909/2007

against
Employer - respondent

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms B Glynn

Members: Mr P Pierson
Mr J Le Cumbre

heard this appeal at Longford on 29th October 2008 and 13th January 2009

Representation:

Appellant: Ms Patricia Quinn
John J Quinn & Company
Solicitors
Earl Street
Longford

Respondent: Ms Deirdre Gearty
F. J. Gearty & Co.
Solicitors
4/5 Church Street
Longford

The decision of the Tribunal was as follows:

The Tribunal heard preliminary submissions over whether the appellant had sufficient service to claim under the Redundancy Acts. The Tribunal decided that he had sufficient service and therefore heard the claim.

Appellant's Case:

The appellant worked as a block layer for the respondent company on various sites from 31st August 2005 until 2nd October 2007. On Tuesday 2nd October 2007 the Managing Director (MD) arrived onsite and told the appellant that there was nothing new starting, things were slowing down

and that he wouldn't have anything for a while. The appellant packed his things and left. The following Friday the appellant saw a job, as a fire fighter, that he wanted to apply for. He phoned MD to see if there was any work and whether he should apply for the job. MD told him to go ahead and that a job coming up in Roosky would only take a few days and that someone else would do it. The appellant believed that the job in Roosky was only to build a manhole and understood that there was no more work with the company. He disputed that he told MD that he had another job.

When the appellant went to the office to collect his wages he asked a second Company Director (CD) for his holiday pay and told her that he was going to England to watch a soccer match. He later had a mortgage protection insurance form signed by CD on which she wrote that 'there was no further work' at that time. The appellant had no written contract of employment and had only ever received one payslip, when he began his employment.

Respondent's Case:

MD contended that when he went to the site, on 2nd October 2007, it was the appellant who approached him and told him that work was very scarce, to which he agreed. The appellant suggested that if it suited MD he had a couple of week's work building walls for friends. MD told him he had a job coming up in Shannon Key West. On Friday morning MD received a call from the appellant to say that he had been offered a fulltime position block laying with a company and should he take it. MD told him to take it if it suited him. There was no mention of a fire fighter job.

MD disputed that the job in Shannon Key West was to build a manhole, but rather that it was a large job that required all his block layers. On Friday CD told him that the appellant had gone to England. MD considered that the appellant had left his employment.

CD gave evidence that she spoke to the appellant on Wednesday 3rd October 2007. He told her that he was going to England that following day and that he was starting a new job on Monday. She didn't know what the new job was, but gave him his wages and holiday entitlement and wished him well. CD agreed that she had written on the mortgage protection insurance form that there was 'no further work'. When the appellant's partner came to the office a couple of weeks later and asked for a redundancy payment for the appellant, CD sought legal advice and contacted the accountant to see if they could pay a redundancy payment. When the mortgage insurance company rang and asked if the appellant had been made redundant CD told them it was in dispute at that time.

Determination:

The Tribunal is satisfied that a redundancy situation existed, and accordingly, award the appellant a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2003, based on the following criteria:

Date of Commencement:	31 st August 2005
Date of Termination:	2 nd October 2007
Gross Weekly Pay:	€605.52

This award is made subject to the appellant having been in insurable employment under the Social

Welfare Acts during the relevant period.

Under the Minimum Notice And Terms of Employment Acts, 1973 to 2001, the Tribunal awards the appellant 1,211.04 (one-thousand two-hundred and eleven euro, four cent).

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)