

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

-appellant

CASE NO.

RP646/2008

MN692/2008

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: Mr J. Sheedy

Members: Mr D. Hegarty
Mr J. McDonnell

heard this appeal at Cork on 17th February 2009

Representation:

Appellant: Mr Diarmuid Enright, Ucatt Ireland, Cork District Office,
Carpenters Hall, 6 Father Matthew Quay, Co Cork

Respondent: No appearance or representation for the respondent.

The decision of the Tribunal was as follows:

This appeal was heard simultaneously with RP729.08, RP730.08, RP762.08, and RP644.08.

The Tribunal was aware that the Secretariat received a telephone call from Mr. B of the company on the 16th February 2009. Mr. B informed the Secretariat that due to personal circumstances he would be unable to attend the hearing on the 17th February 2009. The firm of solicitors on file for the respondent were not in attendance at the hearing on behalf of the respondent. Upon telephoning the firm of solicitors it was confirmed that the firm would not be representing the respondent before the Tribunal in these matters. The Tribunal subsequently received facsimiles from the firm of solicitors confirming the firm was coming off record in relation to these matters. The Tribunal considered the matter on the 17th February 2009 and determined that the hearing should proceed.

The appellant was foreman on the site in Cork but as he was a carpenter by trade he was asked to assist with finishing the carpentry work in the kitchens. On the 25 January 2008 the materials for this work were depleted. The appellant received a telephone call at 4pm informing him that there were two jobs in Dublin and one in Dundalk. The appellant did not accept the offer of alternative work in Dublin as he had doubts as to the existence of such work. He was aware of this, as he was responsible for handling company monies.

Determination:

The Tribunal having heard the evidence of the appellant is satisfied that S.7 applies, which states, “*an employee shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to-*

(a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish.”

The appellant did not receive adequate notice of the alternative offered or confirmation of the new work.

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:	30 November 1949
Date of Commencement:	17 November 2003
Date of Termination:	25 January 2008
Gross Weekly Pay:	€950.13

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

The Tribunal also awards the appellant the sum of €1,900.26 being the equivalent of two weeks' gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)