

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP1339/2008

against

Employer

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr B. Garvey BL

Members: Mr F. Cunneen  
Mr. P. Woods

heard this appeal at Dublin on 1st April 2009

Representation:

\_\_\_\_\_

Appellant :

In person

Respondent:

XXXX

The decision of the Tribunal was as follows:-

#### **Appellant's case:**

The appellant worked for the respondent as an apprentice stonemason from 4<sup>th</sup> January 2005. On 23<sup>rd</sup> September 2008 he was told he was being put on temporary lay-off from 3<sup>rd</sup> October 2008. He was told to ring the respondent in a few weeks. He was not paid notice or holiday money at this time. He took it that he was being dismissed. Around two weeks later he rang the respondent and asked if there was any work and was told there was nothing happening at that moment but there was a possibility of work in a few more weeks. He had heard that there were a few lads still working for the respondent. He was looking for other work all the time and secured alternative employment in January 2009. In order to claim redundancy he sent form RP77 to the respondent on 7<sup>th</sup> November 2008 and a copy of this form was shown to the Tribunal. This form was sent to the respondent by ordinary post. When the appellant rang the union he was told he was not entitled to redundancy.

In cross-examination witness denied that the respondent told him and six other employees that they were on protective notice. In the first week of February 2009 he received a text message offering him his job back but at that stage he had obtained alternative employment. He did not receive a telephone call from the respondent at this time.

The appellant did preserve his apprenticeship and he is now a qualified stonemason.

**Respondent's case:**

The appellant worked as an apprentice stonemason and there was never a complaint about his work. They had a good working relationship. When the appellant had a head injury and was out of work for three or four months in 2008 they kept the job open for him. In the latter part of 2008 they were struggling to keep going. The job the appellant and his colleagues was working on was finished and they were saying to the lads that they would have a job coming up in Newbridge but that job did not kick in immediately. He expected that the appellant would have come back the same as all the other lads. The appellant was the only one to lodge a claim before the Tribunal. Heknew that the appellant had three months left to finish his apprenticeship and other lads that were in the same position came back when work became available. The appellant's brother was also let go and is now back working for the respondent.

In cross-examination witness stated that the form RP77 was sent to his home address and he did not receive it. They send all their paper work to the accountant. The appellant rang him a couple of times wondering why certain lads were kept on. Witness rang four or five lads and told them that the job was starting and he sent a text message on 2<sup>nd</sup> February 2009. The appellant's response was that he had sourced other employment.

Every job the respondent does is specific

**Determination:**

The employee stated that he served form RP77 but he had not supportive evidence and no proof of posting the form. The respondent denied having ever received the form. There was also a considerable degree of conflict regarding the number of phone calls between the parties as to the availability of work.

The Tribunal having considered the evidence is unanimous that a redundancy situation did not arise. The conditions which would warrant this being a redundancy situation under the Acts were not fulfilled. The claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

