

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

CASE NO.

RP1158/2008

- *appellant*

against

Employer

- *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison
Mr G. Hunter

heard this appeal at Letterkenny on 13th May 2009

Representation:

Appellant(s) : Mr. Paddy Hannigan, Citizens Information Centre, Public Services Centre, Blaney Road, Letterkenny, Co. Donegal

Respondent(s) : Cathal Quinn, Quinn Dillon & Co., Solicitors, 34 Lower Main Street, Letterkenny, Co. Donegal

The decision of the Tribunal was as follows:-

The claimant gave evidence of having started as a driver in 1977; he drove lorries for the company collecting and delivering furniture for a long number of years. In early 2007 things were slack and he was put on short time by the managing director (hereafter referred to as "MD"), 3 days a week, on a recycling job involving driving. As time went on he was getting extra days at work driving a furniture lorry as well and was content with that. At the end of 2007/start of 2008 things were going very slack in the job and MD told him he'd have to be let go, he made his case to be kept in the recycling job, and that was done but at a wage of €150.00 per week for a three day week. He was content with that at the time as he hoped he'd get more driving work in the job, like had happened for him in 2008. As time went by there was no improvement and he served a notice on the company (RP9), he handed it in to the in-house accountant (hereafter referred to as "AC"), and subsequently was offered a redundancy lump sum based on gross wages of €150.00 per week by AC, but he refused it as he felt he was entitled to redundancy based on his driver's pay, or to go back to full time working. He was subsequently approached by MD who asked why he didn't take the money offered, he told him to that it was all he was going to get and he had nothing else for him, he'd have to go. This was at the end of November 2008 and he left as told on the 5th of December. Under cross-examination he denied that he had lost the capacity to do the Furniture job and had to be taken off it because he was no longer able to load and unload without damaging the furniture,

and denied that he had been retired in February 2007 and taken back just for the recycling job after pleading with MD. He also denied being told he had a job as long as the company was there.

AC gave evidence that he joined the Company in July 2007; he confirmed he was served with the RP9 but Management felt there was no redundancy due, as the claimant should have ceased employment when he finished driving. The claimant mentioned the matter a few times, and he sought advice from an employment consultant who advised him to offer the claimant redundancy based on his current wages of €150.00 per week, he did so after consulting MD but the claimant refused saying he felt he was entitled to more. He (AC) never mentioned sacking or ending his employment to the claimant

MD gave evidence that he was the founder of the company and his current title would more correctly be the Chairman of the company, he remembered the claimant starting with him, he sent him down to Roscommon to buy a lorry to drive. He found the claimant a great worker, diligent and trustworthy. However in later years, up to 2007 he was breaking everyone's heart with damaging the furniture and it had to end. He took the decision to retire him from the furniture lorry driving in early 2007, and put him on a recycling truck, but by the end of that year he was doing a lot of furniture runs again, and a lot of complaints were again coming in. He told him he'd have to retire him completely, but the claimant pleaded for any type of job to get him out of the house. He "made up" the recycling job for him, it was being kind, he told him to keep his own hours on it and he'd give him €150.00 a week. There were no written contracts, and no new contract was issued. In late 2008 the claimant came looking for more money, MD told him it was out of the question, but the Claimant took that as being let go. He told him that he was wrong, that there was work for him as long as the place was standing. He offered him a payment after the form was signed because it would get rid of a problem, and it seemed a fair sum in view of the long service.

Determination:

Having heard the submissions from both parties, and carefully considered the evidence adduced, the Tribunal makes the following findings. The claimant was not on short time or lay off when he served notice by form RP9 on the employer, and therefore the failure of the employer to serve counter-notice in writing within the prescribed period did not of itself entitle the claimant to a redundancy lump sum. The Tribunal is satisfied from all the evidence that the claimant's conditions had been altered by agreement and his job was for a 3-day week of 24 hours at all relevant times. The claimant was entitled to no less than minimum wage for his employment. The Tribunal notes the evidence of AC who confirmed the claimant had been offered a redundancy lump sum. The Tribunal is satisfied from all the evidence that the respondent dismissed the appellant by way of redundancy.

Accordingly, his appeal under the Redundancy Payments Acts, 1967 to 2007 is allowed and the appellant is awarded a statutory redundancy amount under those Acts, and based on the following:

Date of Birth:	18 October 1938
Date of Commencement:	25 May 1977
Date of Termination:	05 December 2008

Gross Weekly Wage: € 207.60

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)