

## EMPLOYMENT APPEALS TRIBUNAL

Appeals Of:  
Employee  
WT509/2009

Case No.  
-Appellant RP1416/2008

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: Ms. N. O'Carroll-Kelly B.L.

Members: Mr. J. O'Neill  
Mr. F. Barry

heard this appeal at Carlow on 4th June 2009

#### **Representation:**

Appellant: In person.

Respondent: The administrator of the company.

#### **The decision of the Tribunal was as follows:**

At the outset of the hearing the respondent agreed to the addition of a claim under the Organisation of Working Time Act, 1997.

The respondent's administrator gave evidence to the Tribunal that towards the latter part of 2008 the company had difficulty securing further business. At that time the company employed a director, two apprentices (including the appellant), a plumber and a labourer. As a result of the scarcity of work during August 2008 the employees of the company were put on verbal notice that lay-offs could ensue.

A decision was taken to lay-off the appellant and the other apprentice until further work was secured. The appellant was put on notice of this decision on the 12<sup>th</sup> September 2008. The director of the company told the appellant that he would be placed on lay-off two weeks later. He informed the appellant that he would make contact with him should work become available. The appellant's lay-off commenced on the 26<sup>th</sup> September 2008.

In October 2008 the director of the company contacted the appellant with an offer of work. The appellant returned to work with the company for three days. On the 28<sup>th</sup> October 2008 and the 3<sup>rd</sup> November 2008 the director made an offer of further work to the appellant. The appellant declined the work offered.

On the 17<sup>th</sup> November 2008 the director made a further offer of work to the appellant. This time the director offered the appellant work until his return to Fás off-the-job training in January 2009. The appellant agreed to return to work and the respondent sent the necessary paperwork to Fás. However, the appellant did not return to work with the respondent.

During cross-examination it was accepted by the witness that the appellant had informed the director during the telephone call of the 3<sup>rd</sup> November 2008 that he was out of the country. The appellant's P45 stated his employment was terminated on the 26<sup>th</sup> September 2008 as the appellant had specifically requested this for purposes of unemployment assistance.

The appellant stated that he was not in a position to take up the offer of work as he was abroad from the 28<sup>th</sup> October 2008 to the 3<sup>rd</sup> November 2008. The appellant stated that he had not received a telephone call from the director on the 17<sup>th</sup> November 2008 with an offer of work.

The administrator of the respondent agreed with the appellant that ten days holiday pay was owed.

**Determination:**

Having heard all the evidence the Tribunal is satisfied that following the appellant's lay-off, which commenced on the 26<sup>th</sup> September 2008, the respondent invited the appellant to return to work on a number of occasions. However, the appellant failed to return to work on the 28<sup>th</sup> October 2008, 3<sup>rd</sup> November 2008 and the 17<sup>th</sup> November 2008 and it is on that basis that the Tribunal finds that a redundancy situation did not arise. The appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

The Tribunal awards the appellant the sum of €800.00 (being the equivalent of ten days holiday pay) under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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