

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee - **Appellant**

RP73/2009

against

MN85/2009

Employer -**Respondent**

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. O'Connor

Members: Mr. M. Forde  
Mr. J. McDonnell

heard these appeals at Killarney on 16 September 2009

#### **Representation:**

Appellant:

Mr. Dan O'Connor, Terence F. Casey & Co., Solicitors,  
99 College Street, Killarney, Co. Kerry

Respondent:

Director of the respondent

The determination of the Tribunal was as follows:

The appellant was employed a teleporter driver/general operative from 15 June 2005. The employment was uneventful until September 2008 when a director of the respondent (DR) gave the appellant notice of lay off in a telephone conversation. The respondent's position is that this occurred on Friday 5 September 2008. The appellant's position is that this occurred on Monday 8 September 2008. It is common case that the appellant was given notice that he was to be laid off with effect from 19 September 2008.

The appellant approached DR about a redundancy payment but DR told the appellant that they were not declaring redundancies as the respondent hoped to get all their employees back to work in time. The appellant lodged a claim under both the Redundancy Payments Acts and the Minimum Notice and Terms of Employment Acts with the Employment Appeals Tribunal on 2 January 2009. Some time in May 2009 the respondent wrote to the appellant to confirm the offer of re-employment to the appellant made a few days earlier, which the appellant rejected. The appellant wrote to the respondent on 1 June 2009 stating that he might reconsider the job offer if he were to receive a

redundancy payment.

**Determination:**

It is common case that the appellant was laid off from 19 September 2008. After four weeks of lay off the appellant approached the respondent about a redundancy payment and was told that the respondent hoped to get all their employees back to work in time. The respondent denied having received form RP77 from the claimant and took the position that this is not the correct form on which to claim redundancy by reason of lay off. The Tribunal is satisfied that respondent was aware that the appellant wanted to claim a redundancy payment. Under section 12 (2) (a) of the Redundancy Payments Acts an employee is entitled to seek a redundancy lump sum payment if laid off for four consecutive weeks. The respondent did not offer re-employment until some time in May 2009. In these circumstances the Tribunal is satisfied that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria

Date of Birth	20 August 1974
Employment commenced	15 June 2005
Employment ended	19 September 2008
Gross weekly pay	€617-10

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.

In circumstances where the appellant has claimed redundancy by reason of lay-off a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not arise

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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