

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
RP1361/2008

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr J. Hennessy
Ms. A. Moore

heard this appeal at Portlaoise on 28th July 2009

Representation:

Appellant(s): In person

Respondent(s): Peninsula Business Services, Unit 3 Ground Floor Block S,
East Point Business Park, Dublin 3

The decision of the Tribunal was as follows:-

Respondent's Case

The respondent provides security guards for companies normally in Laois, Offaly and Westmeath. The area supervisor gave evidence on behalf of the respondent. As part of his duties, he visits the sites where the respondent provides security.

The appellant was based as a security guard on a building site in Portlarlinton. He normally worked a 39-hour week. The builders on this site ceased operating and the respondent company was only given one week's notice of this. As a result of this the appellant was offered an alternative position in a meat factory located in Kilbeggan. This offer resulted in a reduction in the appellant's working hours from 39 to 36 hours per week. This witness maintained he was present when the operations manager made this offer to the appellant. The appellant declined this offer as he said it was too far to travel.

This witness denied that he had told the appellant that there was no work for him at all.

In replying to questions from the Tribunal he explained that the job in the meat factory was slightly different from that of the work on the building site. As the appellant worked nights on the building site his duties included patrols, manning the gates for any deliveries and turning off lights. The role in the meat factory where the appellant was offered work would include checking in and out deliveries, and also include taking in lorries of cattle and weighing them in and out. He agreed that most likely that there would be far fewer deliveries to a building site at night in comparison to the meat factory. The respondent produced travel routes from the appellant's home to Portarlinton and Kilbeggan with travel time noted on same. However no mileage was shown on these travel routes.

Appellant's Case

The appellant gave evidence that he was on the site in Portarlinton when his area supervisor arrived and told him he was pulling the plug on the site. He informed him that he had no other work available for him and he would have to live on his redundancy.

Later he had met the area supervisor and Mr L and they had offered him one days work in Kilbeggan, which he declined. He went to the office to get his payslip where the operations manager was present. At no stage did she offer him any alternative employment. He reiterated that he was only offered one shift in Kilbeggan.

Under cross-examination he agreed that there was a mobility clause in his contract of employment. He had previously worked in different locations for the respondent. He explained that Portarlinton was 7 miles from home while Kilbeggan was 28 miles. The following day after the building site was closed he was offered one shift in Kilbeggan. He denied that when the operations manager had offered him the alternative position that he had responded by saying he only wanted his lump sum.

Determination

The Tribunal prefer the evidence of the appellant that he was only offered one shift's work and that he believed that was the offer made. The difference in the cost to the appellant of having to travel further was not offset by an offer from the employer to defray this cost. The employer's evidence was that he had offered the appellant thirty-six hours a week which was a reduction in the appellant's income for the position offered, if such an offer had been made. The Tribunal took account of the fact that the person who allegedly made this offer did not attend the hearing to give evidence to the Tribunal. The position allegedly offered to the appellant was of a different nature to that performed by him on the building site.

The Tribunal therefore finds that the appeal under the Redundancy Payments Acts, 1967 to 2007 succeeds and the appellant is awarded a redundancy lump sum, which is to be calculated on the basis of the following criteria:

Date of Birth:	12 th May 1957
Date of Commencement:	November 2004
Date of Termination:	5 th October 2008
Gross Weekly Wage:	€363.15

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

Please note that a statutory weekly ceiling limit of €600.00 applies to all payments from the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)