

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE - **appellant**

MN301/2009
RP303/2009

against

EMPLOYER - **respondent**

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr. P. Casey
Mr J. McDonnell

heard this appeal at Cork on 5th November 2009

Representation:

Appellant :

Mr Jan Jaroslaw Potocki, Polish English Translation,
"Pilawa", Office 19, 21-23 Oliver Plunkett Street, Cork

Respondent :

Financial Controller

The decision of the Tribunal was as follows:-

Respondent case:

The Contracts Manager told the Tribunal that on 28th October 2008 the appellant was placed on temporary lay off for a period of four to six weeks because of shortage of work. He was asked to return to work on 4th December 2008. Witness had a meeting with a number of the employees including the appellant and offered them work on a temporary basis. A letter dated 4th December 2008 was sent to the appellant confirming the offer of work. The appellant and another employee declined the offer as witness could not guarantee full time work for the future.

In answer to questions from Tribunal members witness stated that the duration of the work being offered was not discussed. Of the eight employees six returned to work and some of these are still employed by the respondent. The P.45 was issued to the appellant on 28th November 2008.

The Accountant stated that when the appellant declined the offer of work on 4th December 2008 he then asked for his P.45. The 28th November 2008 was the appellant's last insurable week and this was the date on his P.45.

In answer to questions from Tribunal members witness stated that fifty-two employees were paid redundancy, others were not entitled to redundancy and some had left of their own accord. The appellant had secured alternative employment.

Appellant's case:

The appellant was laid off on 28th October 2008. He received a telephone call from the Contracts Manager to pick up his P.45. The appellant and his friend had a meeting with the Contracts Manager where they were told there was no more work. This meeting took place after being on lay off for four weeks. He did not receive a letter asking him back to work.

In answer to questions from Tribunal members the appellant stated that while he was a member of the union he did not contact them in relation to his redundancy payment. He did not have another job to go to when he finished with the respondent and has not obtained alternative work since that time.

Determination:

On balance the Tribunal accepts the evidence of the respondent that the appellant was given the opportunity to return to work and he did not accept the offer. The appeal under the Redundancy Payments Acts, 1967 to 2007 is dismissed. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is also dismissed as the appellant left of his own accord.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

