

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE –**Appellant**

RP1524/2009

against

MN1322/2009

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: Ms. B. Glynn

Members: Mr. B. O'Carroll
Ms. H. Murphy

heard these appeals at Athlone on 7 May 2010

Representation:

Appellant:

Ms. Teresa McCourt, Development Manager, Co. Westmeath
Citizens Information Service, St. Mary's Square, Athlone, Co. Westmeath

Respondent:

Mr. Stephen Mahon, Patrick Hogan & Co. Solicitors, Dunlo Street, Ballinasloe, Co.
Galway

The determination of the Tribunal was as follows:

The respondent employed the appellant as a carpenter from 9 May 2005. The employment was uneventful until September 2008 when the appellant needed surgery on his back and told the director of the respondent (DR) that he would be off work for some six weeks. The appellant did not return to work until early December 2008 by which time he had undergone training from FAS in tiling. The appellant worked for the respondent on a tiling job for one week ending on 19 December 2008.

The respondent had no work available for the appellant in January 2009 and met the appellant on 10 January 2009. There is a dispute between the parties about this meeting with the respondent's position being that DR told the appellant there would be work available on a renovation job from February 2009 and that the appellant was on temporary lay-off. The appellant's position is that on 10 January DR told him that there was no more work for him and the best thing would be for the

appellant to go to Australia. DR had asked him to return his tools.

Following the meeting on 10 January, after a request from the appellant, DR issued a P45 for Social Welfare purposes. This document showed the date of dismissal as 5 September 2008. DR told the Tribunal that this was done in an attempt to enable the appellant to get quicker access to Social Welfare payments.

On 4 February 2009 the appellant approached DR seeking a redundancy payment and was refused. The appellant wrote to the respondent the following day renewing his claim for redundancy pay and serving form RP77 on the respondent. DR wrote to the appellant on 10 February 2009 saying he needed to discuss the matter with his accountant and solicitor. In this letter DR asserted that he had offered the appellant a temporary position, which the appellant had refused.

The appellant wrote to the respondent on 16 February 2009 and asserted that the respondent had only offered the appellant a temporary position in the letter of 10 February and again asserted his right to a redundancy payment. DR wrote to the appellant on 21 February 2009 and again asserted that there was still a position open to the appellant. The appellant was invited to return to the employment.

Determination:

Whilst there is a conflict of evidence about many of the relevant issues in this case the Tribunal has decided, on the balance of probability, that DR did suggest to the appellant on 10 January 2009 that he would be better off going to Australia and also asked for the return of tools. DR also issued a P45 following the meeting of 10 January 2009. For all these reasons the Tribunal is satisfied that the appellant was dismissed by reason of redundancy on 10 January 2009. Accordingly, 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	2 April 1981
Employment commenced	15 May 2005
Employment ended	10 January 2009
Gross weekly pay	€500-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. The Tribunal further awards €1,000-00, being two weeks' pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)