

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE *-appellant*

CASE NO.  
RP750/2009

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. Goulding  
Mr J. Moore

heard this appeal at Navan on 1st February 2010

#### **Representation:**

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Appellant: In Person

Respondent: In Person

The decision of the Tribunal was as follows: -

#### **Claimant's Case**

The claimant worked as a cleaner for the respondent. The contract the respondent had with a local bakery was terminated. The appellant was given a month's notice that the contract was coming to an end with the bakery.

The respondent offered the appellant a job, which required him to drive a van; the appellant was not in possession of a driving licence. The respondent also offered the appellant a job cleaning in a local factory to his house. The appellant's sister also worked for the respondent. If the appellant had accepted this position he would have been given his sister's hours of work and she would have been made redundant.

The appellant told the respondent he had been offered a job directly with the bakery and needed his P45. The appellant did not think there was any further work for him with the respondent.

## **Respondents Case**

The respondent lost a contract they had with a local bakery. The appellant was a valued member of staff so the respondent was attempting to find alternative employment for him.

The respondent offered the appellant a job in a local factory they had a contract with. The appellant's sister was currently working in that factory, as she had less service than the appellant she would be made redundant and the appellant would replace her.

The respondent offered him a job in Dublin that would require the use of a van. The discussion did not progress into details as the claimant resigned to work directly for the bakery.

## **Determination**

The Tribunal considered the evidence in this case and it is clear that the position of the appellant was being terminated on the 11<sup>th</sup> of May 2008. It follows therefore that a dismissal was in prospect. The appellant suggested that they had suitable alternative employment to offer the appellant, this offer consisted of a position which required the use of a vehicle, the appellant did not possess a driving licence therefore this position must be considered to be unsuitable. The other position that the respondent intended to offer the appellant involved taking over work that his sister was employed to do, thus depriving her of her employment. It is the considered view of the Tribunal that in the circumstances this could also not be considered suitable employment. As no other offer was forthcoming from the respondent it follows that the appellant is entitled to a Redundancy payment and the Tribunal determine that under the Redundancy Payments Acts, 1967 to 2007 the appellant is entitled to a redundancy lump sum based on the following details:

Date of Birth:	30 <sup>th</sup> November 1972
Commencement Date:	30 <sup>th</sup> August 2004
Termination Date:	11 <sup>th</sup> May 2008
Gross Weekly Pay:	€544.84

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

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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