

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

RP818/2009

EMPLOYEE

appellant

Against

EMPLOYER

respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr G. Mc Auliffe
Mr P. Trehy

heard this appeal at Dublin on 3rd February 2010

Representation:

Appellant(s): Ms Mary Chance, Congress Centres Network, Wicklow Trade Union Centre Ltd, 97 Rear Main Street, Bray, Co. Wicklow

Respondent(s): Ms. Deirdre Gavin, IBEC Confederation House, 84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant told the Tribunal that he was employed as a JCB driver with the respondent. He first commenced employment with the respondent in 1973. He worked Monday to Friday and if he undertook overtime he got paid for it. In January 2009 his gross weekly pay was €616. His last period of employment with the respondent was from May 2006 until February 2009. In April 2007 he gave his employer verbal notice of his intention to resign with effect from the 27 April 2007. He then worked on Friday 27 April 2007, as the respondent did not have anyone to drive a JCB on Friday.

He had intended commencing employment with his new employer on the following Monday but he telephoned the respondent early that morning and asked could he return to work to his own job. He returned to work with the respondent on Monday 30 April 2007. Between May 2006 and February 2009 he did not claim social welfare or undertake work for another company. In January/February 2009 he spoke to PB, director of the respondent and he asked him about redundancy and his

entitlements and PB told him that he was entitled to one weeks pay.

In cross-examination he stated that he signed his P45. When he left the respondent in February 2009 the respondent did not have a job for him as work had dried up. He had a good working relationship with the respondent.

Respondent's Case

PB, director of the respondent company told the Tribunal that he worked in the office. The respondent was in the plant hire business. The respondent had contracts with the local authority. The appellant told him on Monday that he was leaving on Thursday. He told the appellant he could not leave on Thursday and the appellant remained in work on Friday. On Friday he completed a P45 for the appellant and he gave him any outstanding monies that were due to him. The P45 was posted to the appellant. The appellant worked with the respondent intermittently from 1983. The appellant would leave and then return. In late December 2008 to mid 2009 six employees were let go as contracts the respondent had were discontinued. In April 2007 the appellant worked for the respondent.

In cross-examination he stated that the appellant left the respondent in 2007 and the appellant asked about redundancy. He told the appellant that he did not have the requisite service for redundancy. The respondent issued terms and conditions of employment to employees and did not issue contracts of employment. The respondent operated LIFFO in relation to redundancies and the appellant had left. The appellant asked for his job back on Monday 30 April 2007 and he continued to work with the respondent until he was let go. He had a very good relationship with the appellant and there was no animosity between them. The appellant was let go in February 2009, as the respondent had no work for him.

Determination

The Tribunal notes that while the appellant notified his intention to leave the employment and despite the fact that a P45 duly issued there was no meaningful break in his employment. The Tribunal notes that the appellant did not receive any social welfare payment or remuneration from any other employment between 26 April 2007 and 30 April 2007. The appellant was made redundant on 6 February 2009. The Tribunal believes the appellant was in continuous employment since May 2006 and accordingly the appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria: -

Date of Birth	09 July 1955
Date employment began	15 May 2006
Date employment ended	06 February 2009
Gross weekly pay	€616.00

This award is being made subject to the appellant being in insurable employment for the purposes of the Social Welfare Acts during the relevant period.

Please note that a weekly ceiling of €600 applies to all payments made from the Social Insurance Fund.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

