

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE - *appellant*

RP1160/2009

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr P. Pierson
Mr J. Moore

heard this appeal at Athlone on 4th March 2010

Representation:

Appellant(s) : Brendan T. Muldowney & Co., Solicitors, 7 Church Street, Longford

Respondent(s) : In Person

Appellant's Case

The claimant gave direct evidence that he commenced working for the respondent company on the 18 April 2005. He was employed as a shop manager. On the 14 April 2009 he was told by a director of the respondent company, hereafter known as MO'R that the company could no longer afford to employ a shop manager. He worked his two weeks notice period and was issued with a letter from the company on the 28 April 2009 stating that he was being let go due to the downturn in the economy. He was also issued with his P45 on this date.

Respondent's Case

Witness for the respondent hereafter known as DO'R gave evidence that the requirement for a shop manager in the business no longer existed, turnover was down but the appellant was not dismissed. MO'R had attempted to discuss the possibility of the appellant accepting a different position as a shop assistant but this discussion never progressed because the appellant did not return to work after the 28 April 2009. The letter issued by the company on the 28 April 2009 was signed by an office person who did not have the authority to hire or fire employees, but the witness agreed that it

could have been sent on the authority of a different director who was not present at the hearing. The position of shop manager has not been filled since the termination of the appellant's employment.

MO'R gave evidence that she informed the appellant that he was being let go as shop manager and expected to discuss the possibility of him being employed as a shop assistant. She was waiting for the appellant to return and discuss this possibility with her but this did not happen. She did not realise the appellant was working out his notice between the 14 April 2009 and the 28 April 2009. She understood he was considering accepting the position as a shop assistant during the period he was working his notice. She agreed that the appellant's salary would have been reduced if he accepted the position of shop assistant but no discussions ever took place about this matter. She did not realise the appellant had left the company until after he had gone.

Determination

The Tribunal heard evidence from a respondent's witness stating that she spoke with the appellant on the 14 April 2009 advising him that his position as manager was no longer viable. According to the evidence given, the appellant understood this to mean that he was being dismissed by reason of redundancy. Witness for the respondent attempted to interpret this conversation as meaning that the appellant was not being dismissed but that the issue was simply raised as an indication of future intentions.

The Tribunal prefers the evidence of the appellant that he was informed of his dismissal and given two weeks notice on the 14 April 2009. The Tribunal notes that the appellant's position of manager has not been filled since the termination of his employment and accordingly awards the appellant a lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information.

Date of Birth:	26 December 1960
Date of commencement of employment:	18 April 2005
Date of termination of employment:	28 April 2009
Gross weekly pay:	€730.77

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 there is a weekly ceiling of €600 on all awards made from the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

