

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP825/2009

against

EMPLOYER

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr J. Hennessy  
Ms H. Kelleher

heard this appeal at Waterford on 25th February 2010

Representation:

\_\_\_\_\_

Appellant :

Mr Phil Funchion, Noreside Resource Centre, 22 Vicar Street  
Kilkenny

Respondent :

In person

The decision of the Tribunal was as follows:-

#### **Appellant's case:**

In mid October 2008 the appellant and another colleague were told that work was ceasing at the end of the month. On 30<sup>th</sup> October, the day after he was laid off he felt sick and was hospitalised with acute appendicitis. He was on sick certificates for a number of weeks and he told the respondent he would get back to him to check the availability of work. The first time he rang the respondent he was told that tenders were being put in and he was told the same thing when he rang in January 2009. When he asked for redundancy in January he was told to go back and ring Citizens Information, that he was not getting the correct information. In early February 2009 he was fit to return to work.

In cross-examination witness stated that he told the employer on 6<sup>th</sup> February 2009 that he was available for work and this was verified by letter dated 20<sup>th</sup> February 2009. He was offered a few

days work in March /April, two days alternate weeks over a period of two months with another employer.

In answer to questions from Tribunal members the appellant stated that when he contacted the employer on 6<sup>th</sup> February 2009 stating that he was fit to return to work he was asked to get a letter from his doctor to verify that he was fit to resume work.

**Respondent's case:**

At the beginning of October 2008 he served notice of temporary lay off. At the end of October the appellant was ill with appendicitis and septicemia and was on benefit during November and December. The appellant said it suited him. Two contracts he had tendered for he received. The appellant spoke to him regarding redundancy at the end of January or February 2009 and the respondent told him he had no problem with redundancy if everything was above board. When he enquired from the Social Welfare office he was told the appellant was not entitled to redundancy as he was on benefit. On 20<sup>th</sup> February 2009 the appellant sent him a letter regarding his fitness to return to work. The appellant did not come to him on 6<sup>th</sup> February. The appellant's parents felt it was better for him to be on benefit as he was not well enough to work.

In cross-examination witness stated that he did not issue form RP9. He told the appellant he was on temporary lay off. The appellant's uncle is a good friend of witness. He did not have work available in November or December but would have had work in or around March 2009. In November/December he told the appellant what contracts he had tendered for. He did not contact the appellant after he applied for redundancy as he heard from the appellant's uncle that he was working for another contractor.

In answer to questions from Tribunal members witness stated that he made enquiries from Social Welfare but did not tell them the appellant was on lay off as they did not ask him. He agreed it would be reasonable for the appellant to seek other work since he had not heard from the respondent. He received the doctor's letter ten days after 20<sup>th</sup> February 2009. While he had heard that the claimant had other work he did not know if it was temporary.

**Determination:**

The appellant made himself available for work and he sent confirmation to the respondent by way of letter from his doctor dated 20<sup>th</sup> February 2009. The respondent should have notified the appellant that he had thirteen weeks work available, which he did not do and on that basis he is due redundancy. The appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth	26 <sup>th</sup> August 1983
Date employment commenced	19 <sup>th</sup> July 2004
Date employment ended	31 <sup>st</sup> October 2008
Gross weekly salary	€829.60

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

Please also note that this award is being 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)

