

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP990/2009

- appellant

against

EMPLOYER

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr J. Hennessy
Mr T. Kelly

heard this appeal at Waterford on 26th February 2010

Representation:

Appellant :

Mr John Purcell, Purcell Cullen Kennedy, Solicitors,
21 Parnell Street, Waterford

Respondent :

co-director of respondent

The decision of the Tribunal was as follows:-

Appellant's case:

The appellant in his evidence told the Tribunal that he was a general worker and did cabinet making for the respondent. On 30th January 2009 he was asked by the one of the office staff, F if he would go to work in Dublin. He said he could not go to Dublin as his mother was ill and he lives at home. The appellant was told that was grand and there was no mention of temporary lay off. He and his mother had just moved back to the house after renovations had been completed. His mother had suffered a cardiac arrest the previous week. The appellant was then called to the office by the respondent/proprietor and told that work was slack. No pressure was being put on him and he was

not told he was being put on temporary lay off because he was not in a position to go to work in Dublin. He was given a letter dated 30th January 2009 confirming the lay off. Four weeks later at the request of the employer the appellant called back and was told that things were still slack. When the appellant asked if he would call again after a further four weeks he was told to leave it. The appellant called to the employer again after six weeks and at this stage the company was on a three-day week. He appellant asked the employer if there was any work and he was told that he was waiting for tenders and he would get back to him. The third time the appellant called he had printed a form RP9 from the web site and gave it to an employee, GA. He sent a text message on 7th April 2009 and got confirmation that the employer had got the envelope containing the form RP9. The appellant received no further contact from the employer.

In cross-examination witness stated that when he was asked to go to Dublin to work he just stated that he could not go and was told that it was okay.

In answer to questions from Tribunal members witness confirmed that there were other employees that could have gone to work in Dublin. Some employees worked in Dublin for fourteen or fifteen years.

Respondent's case:

The respondent in his evidence told the Tribunal that on 26th January 2009 they had a job which was ready for fitting in Dublin. One of the staff, F makes the arrangements for staff to go to Dublin and when he asked the appellant he refused. He asked the appellant to come to his office and he said he was not going to Dublin anymore. He did not know that his mother was that ill. Witness explained that the workshop was very quiet and that the only work available was on site. The appellant stayed for that week and when he still refused to go to Dublin he put him on temporary lay off until work came in. The Dublin work started that week and continued until July. August was the holiday time and in September another job came in which lasted until Christmas. There was also a job in Kerry in November which was ongoing as of the date of this hearing. On the rare occasion another employee/machinist had been on site and there was another who was only on site when unloading materials. Two non-Irish workers were polishers. These employees were more valuable on site. Everyone else was on short-time. The claimant did come back and they were hiring sub-contractors up to and including January 2010. The claimant was advised that the workshop was specialised and these workers cannot go on site.

In cross-examination witness stated that as the appellant would not work in Dublin he was given the letter dated 30th January 2009. He got the form RP9 several weeks later. He may have received the envelope earlier but he was not aware of its contents. He did not open the envelope for six weeks. When and if the appellant came back to sign the form witness was going to tell him there was work available. Another employee went to work in Dublin in place of the appellant. He had no opportunity to tell the appellant he did not intend to sign form RP9 as the appellant did not come back or contact witness.

The Tribunal also heard evidence from an employee referred to as GA. He stated that the appellant came in and gave him the envelope to give to the respondent. The respondent was not there at the time so he left the envelope on the keyboard of his computer. The respondent did get the envelope but he did not speak about it to witness.

Determination:

The Tribunal noted the fact that the respondent accepted that the appellant was not in a position to travel to Dublin. The Tribunal also accepts that there was no position available in the workshop. On receipt of Form RP9 the employer did not respond within the stipulated timeframe. The Tribunal finds that the appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

| | |
|---------------------------|-------------------------------|
| Date of Birth | 11 th April 1984 |
| Date employment commenced | 01 st July 2002 |
| Date employment ended | 30 th January 2009 |
| Gross weekly salary | €472.50 |

Please 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)

