

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL (S) OF:

Employee  
- *appellant*

### CASE NO.

RP1814/2009

against

Employer - *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Ms. R. Kerrigan

heard this appeal at Donegal on 12th February 2010

#### Representation:

Appellant: In person

Respondent: In person

The decision of the Tribunal was as follows:-

#### **Appellant's Case**

The appellant gave direct sworn evidence that he was based in the respondent's quarry driving a truck. He finished up for his Christmas holidays in 2008 and when he showed up for work after Christmas one of the directors told him that they had no work for him. He got a letter from one of the directors to enable him to sign on to social welfare. After a period of time the social welfare sought a P45 from him, so he obtained his from the respondent, this is dated 1<sup>st</sup> May 2009. The quarry is not operating and nobody had replaced him as the driver.

Under cross examination it was put to him that the respondent had asked him to return to work for eight weeks in February and March and that they had to take a subcontractor on to do his work in this period. The appellant responded that there had been only two weeks work and he had sent a lad down to the quarry to do it. He denied that he had refused work from the respondent by saying it was not worth his while to work. He admitted he had asked the respondent for redundancy on one occasion not several as suggested by the respondent.

#### **Respondent's Case**

A director of the company gave evidence on behalf of the respondent. The appellant had first mentioned redundancy to another director just before Christmas 2008, they had told the appellant no as they had more work coming up. Normally after the Christmas they would not commence

work in the quarry till February this had been the case for the last three years. The appellant helped one of the directors around the house in January 2009, and he asked about receiving redundancy again. This witness informed the appellant that he did not qualify for redundancy as they had work for him. She also told him that they had a job lined up for the 20<sup>th</sup> February 2009 but the appellant refused this work as he was going to Australia.

In reply to questions from the Tribunal as to how much work they were going to guarantee the appellant in 2009, she explained that the contract commencing on the 22<sup>nd</sup> February 2009 was for eight weeks, and after that she presumed the rest of the year. However the quarry ceased operation in September 2009. The previous year the appellant had worked some three-day weeks.

On the 10<sup>th</sup> March he called to see her again and requested redundancy, she informed him that she would speak to their accountant and revert back to them. They did not issue the appellant with a contract of employment. He requested his P45 in writing so she issued this on the 1<sup>st</sup> May 2009. The company is trading at the moment they are working on two projects but the operational licence is holding things up.

The witness admitted that the appellant had worked for the company for two weeks in February and was paid on a self-employed basis. She explained that in 2007 and in 2008 the quarry did not operate from Christmas to mid February, the appellant had not requested redundancy in these years. She reiterated that at the time he sought redundancy they had work for him.

### **Determination**

The Tribunal is satisfied that a redundancy situation existed in the company; from the evidence adduced it was clear that the respondent could not offer the appellant a minimum of thirteen weeks continuous employment. Accordingly the Tribunal awards the appellant a lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of Birth:	15 <sup>th</sup> August 1943
Date of commencement:	20 <sup>th</sup> September 2004
Date of termination:	19 <sup>th</sup> December 2008
Gross weekly pay:	€450.00

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)