

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

EMPLOYEE

- appellant

### CASE NO.

RP2013/09  
MN1712/09

### Against

EMPLOYER

- respondent

### under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms J. McGovern B.L.

Members: Ms A. Gaule  
Mr T. Brady

heard this appeal at Dublin on 9th June 2010.

### Representation:

Appellant: In person

Respondent: Neil M Blaney & Co, Solicitors, Unit 3, Strand Road,  
Shopping Centre, Portmarnock, Co Dublin

The decision of the Tribunal was as follows:-

### Respondent's Case:

The respondent is a landscape design business. The appellant commenced working on a short time basis in early 2009. He said one to two days a week was no good to him and indicated to the respondent that he wanted longer breaks such as blocks of work so that he could avail of social welfare payments. The respondent made provisions for him and furnished him with a letter in February 2009 to avail of social welfare payments. The appellant continued to work short weeks for several months.

On 16<sup>th</sup> June 2009 the respondent put the appellant on temporary lay off due to lack of work. He again furnished the appellant with a letter so he could avail of social welfare payments. The respondent also maintains that the appellant requested work in blocks of time rather than 3 –4 dayperiods where available. Work was available again on 24<sup>th</sup> June until 26<sup>th</sup> June 2009. The

appellant worked on 24<sup>th</sup> June 2009 but never arrived for work on 25<sup>th</sup> June 2009. The respondent subsequently wrote to him the following day seeking an explanation. The appellant was due to work again on 8<sup>th</sup> July but as he had no transport to work that day he did not attend. He worked 9<sup>th</sup> and 10<sup>th</sup> July and again from 13<sup>th</sup> to 16<sup>th</sup> July. The appellant was on holidays for two weeks in August. The respondent relied upon a schedule of work days that the appellant supposedly undertook during the course of 2009. It is the respondent's contention that during the summer months the appellant had never mentioned that he wanted his redundancy payment.

On 3<sup>rd</sup> September 2009 the appellant texted the respondent asking that the respondent sign an RP9 form for him. The respondent told him that he was on temporary lay off but that work should be available again towards the end of September 2009. The respondent neither received an RP50 form nor an RP9 form from the appellant. There was not a four-week period when the appellant was not working. In the respondent's opinion there was no redundancy situation. Work was available again on 21<sup>st</sup> September 2009 and the appellant worked from that date until 22<sup>nd</sup> December 2009, which was thirteen weeks continuous work. On the latter date the respondent wrote to the appellant advising him to sign on for social welfare payments for a period for up to three weeks commencing on 4<sup>th</sup> January 2010. He subsequently told the appellant to report for work on 25<sup>th</sup> January 2010. The appellant did not attend work that day or any day thereafter. The respondent contended the appellant's termination of employment occurred on 25<sup>th</sup> January 2010 of his own volition.

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

The appellant commenced employment on 20<sup>th</sup> October 1995. He was employed as a landscaper. If the weather was not conducive to landscaping the respondent generally texted him not to go into work but always left it up to the appellant to decide. Work slackened off in January 2009. At that time three full time employees were employed and then one employee was made redundant. The appellant enquired about his work situation. The respondent said he would do his utmost to secure work for him. He worked on a short-term basis from February 2009 and requested a letter from the respondent so that he could claim social welfare payment for the days he was not working. He never asked the respondent for blocks of work at a time. He was put on lay off in June 2009 and requested a letter from the respondent to again avail of social welfare payment. After a four-week period of lay-off he sent an RP9 to the respondent informing him of his intention to claim a redundancy lump sum payment. The appellant contends that his date of dismissal was 26<sup>th</sup> June 2009.

He worked in July 2009 and had holidays in August. On 3<sup>rd</sup> September 2009 he texted the respondent and said he was seeking his redundancy payment. He worked from 21<sup>st</sup> September 2009 until 22<sup>nd</sup> December 2009. The appellant did not attend work on 25<sup>th</sup> January 2010, as he did not think there was work available.

### **Determination:**

The Tribunal carefully considered the evidence adduced at the hearing. The appellant commenced working on a short time basis in February 2009 until June 2009 and worked certain dates in July 2009. He took his holidays in August 2009 and was duly paid. The respondent maintained that the first notice he received in relation to a potential redundancy claim was by text message from the appellant on 3<sup>rd</sup> September 2009. The appellant had wanted him to sign an RP9 form. The appellant did not present any evidence of days worked during the course of 2009.

In early September 2009 work was available on sporadic dates and then thirteen weeks work was available to the appellant between 21<sup>st</sup> September 2009 and 22<sup>nd</sup> December 2009. By letter dated 22<sup>nd</sup> December 2009 the respondent informed the appellant that no work would be available from 4<sup>th</sup> January 2010 for a period of three weeks. The respondent indicated that he verbally told the appellant to commence work on 25<sup>th</sup> January 2010 and outlined the sites he was to work on. He heard nothing more from the appellant.

On the basis of the evidence adduced, the Tribunal finds that a redundancy situation did not exist. Therefore, the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)