

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – **Appellant**

RP1300/2009

against

EMPLOYER– **Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Sheedy

Members: Ms. M. Sweeney
Mr. O. Wills

heard this appeal at Cork on 27 May
and 21 July 2010

Representation:

Appellant:

Ms. Deirdre Cummins B.L. instructed by Ms. Marguerite Ryan,
Diarmuid O'Shea & Co. Solicitors,
60 Main Street, Kinsale, Co. Cork

Respondent:

Mr. Jim Reaney, IBEC, Knockrea House,
Douglas Road, Cork

The determination of the Tribunal was as follows:

The appellant was employed from 1986 as a general operative. From 1990 the appellant worked almost exclusively on night shift with day work to cover for holidays and for training purposes. By the time the employment ended the appellant was mainly employed in the operation of a planing machine, which was operated on both a day and night shift basis.

The employment was uneventful, with the appellant being highly regarded by the respondent, until November 2008. Due to a downturn in the construction industry, to which the respondent is a large supplier of timber, the respondent was forced to implement a re-organisation and rationalisation of the workforce, which reached a peak of 140 in 2007. On 24 November 2008 the then operations director (TD) of the respondent spoke to the appellant about his situation, in particular that the planing machine was no longer going to be operated on night shift. The appellant was offered the opportunity to work one or two days per week but declined this as he did not think it acceptable.

TD then wrote to the appellant on 24 November 2008 informing him that he was to be temporarily laid off from 19 December 2008. In a second letter of 24 November 2008 TD accepted that the offer of day work did not represent an offer of suitable alternative employment for the appellant. This letter also notified the appellant of his entitlement to a lump sum payment under the Redundancy Payments Acts after the prescribed period of lay-off.

There was no further contact until some time in February 2009, by which time TD had left the respondent. When the appellant telephoned the respondent he spoke to the operations director (OD). It is common case that OD told the appellant that he was attempting to find work for him. On 17 April 2009 OD wrote to the appellant to inform him that there was a position available for him with the respondent and he was to contact OD.

The appellant and his union representative met OD on 23 April 2009. It is common case that the appellant was offered three dayshifts per week. The appellant's position is that he was told this was for six or eight weeks. The respondent's position is that the appellant was told he would revert to night shift after the six or eight week period.

On 27 April 2009 the appellant's solicitor wrote to the respondent notifying the appellant's rejection of the offer of three dayshifts a week, which was not guaranteed, as not a reasonable offer. The letter then sought a lump sum payment under the Redundancy Payments Acts. On 6 May 2009 the managing director (MD) wrote to the appellant's solicitor with an offer of five dayshifts per week. MD expressed surprise about the previous offer of work not being guaranteed. He then stated that if this offer was unacceptable, which the respondent disputed, and the appellant wished to claim under the Redundancy Payments Acts he should do so using the statutory form RP9 and any such claim would be considered.

The appellant's solicitor re-iterated the request to the respondent to arrange payment of the redundancy lump sum in a letter of 6 May 2009. On 15 May 2009 MD wrote to the appellant with an offer of three night shifts a week and invited him to contact OD to arrange a start date. On 22 May 2009 the appellant's solicitor wrote to the respondent rejecting the offer.

Determination:

The appellant was laid off from 19 December 2008. There was no offer of any work for the appellant until the meeting with OD on 23 April 2009. The Tribunal is not satisfied that, at that meeting, OD's offer of employment included the return to night work after six or eight weeks. When the appellant's solicitor wrote to the respondent on 27 April 2009 this represented a claim for redundancy lump sum payment by reason of lay-off as, by that time, the appellant had been laid off for well in excess of the four consecutive weeks as set out in Section 12 (2) (a) of the Redundancy Payments Acts, 1967 to 2007. Section 13 (2) of the same Acts gives an employer seven days to give counter-notice of an offer of not less than thirteen weeks work without lay-off or short-time.

The Tribunal is satisfied that MD's letter of 6 May 2009, whilst purporting to be an offer of counter-notice, was not given within seven days of service of the notice of claim. Accordingly, the Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date of Birth	17 September 1964
Employment commenced	1 September 1986
Employment ended	4 May 2009
Gross weekly pay	€514-80

There was a period of non-reckonable service, by reason of lay-off, from 19 December 2008 until 4 May 2009.

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)