EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.
EMPLOYEE –*Appellant* RP1707/2009

against
EMPLOYER–*Respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. D. Moore
Mr. G. Whyte

heard this appeal at Dublin on 12th May 2010

Representation:

Appellant: Ms. Ciara O'Duffy B.L. instructed by Mr Jason O'Sullivan, Gerrard L McGowan, Solicitors, The Square, Balbriggan, Co Dublin

Respondent: Ms. Anne Byrne, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:

Respondent's Case:

A director of the company gave evidence to the Tribunal. The respondent is a plant hire company that hires out vehicles on an hourly basis. The respondent currently has twenty employees. The majority of employees drive to the respondent's yard, collect their vehicle and drive to locations throughout the city or leave machines at a customer's depot.

The appellant drove a truck for the respondent and his pick-up and drop-off point varied throughout his employment. When the appellant initially commenced employment he worked in Donaghmeade but he also performed relief-driving work in the Collins Avenue and Cabra areas. After two years a position arose at Collins Avenue. This was offered to the appellant on the basis that he would remain at this location for as long as there was work available at that location. The appellant remained on the site at Collins Avenue from 2002 to 2009. The appellant drove from his home in north county Dublin to Collins Avenue and then on to various locations throughout Dublin. The appellant collected the vehicle at various locations during his employment. Where

possible, the respondent company tries to ensure continuity and it was common for employees to pick up their trucks from where they were based but the director could not think of any employee who had remained in the same location for the whole of their employment.

The appellant's contract stated that he would be normally/mainly required to work at the employer's premises, *"...and/or any site that the companies vehicles are required to work or be based. You will be given as much notice of any such change of place of work as is reasonably possible."*

On the 19th January 2009 the director received a telephone call regarding the Collins Avenue site. The customer stated that one of its own employees would now carry out the work at Collins Avenue. The respondent utilised the process of last in, first out in making its selection for redundancy. The appellant was not selected as he had longer service. The director outlined the situation to the appellant on the same date and informed him that there was alternative work available at a location approximately seven kilometres from Collins Avenue.

On the 22nd January 2009, the appellant informed the company that he was not interested in accepting the alternative work and that he would be leaving when his truck was off hired.

The work at Collins Avenue finished on the 13th February 2009. The director delivered the P45 to the appellant's house with his last week's wages. The appellant enquired about a redundancy payment and the director told him that he was not entitled to such a payment as the respondent company had alternative work available for him. The appellant said that had he known that he would not receive redundancy he would have done things differently. The director again made the offer of alternative work to the appellant with his usual terms and conditions and continuity of service preserved. The appellant said he would think about it but he did not want to put another person out of work and he did not want the extra travel time to work.

Following a further discussion between the appellant and the director of the company, letter dated 23rd February 2009 was issued to the appellant outlining that the appellant was given two weeks to consider further the offer of alternative work. The letter confirmed to the appellant that should he accept the offer of alternative work there would be no break in his service and he would be employed under the same conditions he had enjoyed. The work offered to the appellant was for the same customer; the nature of the work remained unchanged, he would use the same vehicle, work the same hours and be paid the same wages. The only change was the pick up point, which was some seven kilometres further than Collins Avenue.

The appellant subsequently confirmed on the 6th March 2009 that he would not be accepting the offer of alternative employment.

Appellant's Case:

Giving evidence the appellant stated that he did not recall receiving terms of employment when he commenced employment. When he accepted the position at Collins Avenue he did so on the basis that he would continue to collect and drop-off his vehicle at Collins Avenue for the duration of his employment.

The appellant stated that the offer of alternative employment was unsuitable as the new location would add at least twenty minutes further each way onto his journey and was in an area affected by

traffic congestion. This would bring his travel time to over one and a quarter hours and this was the main reason the appellant did not accept the offer of alternative work. He was also concerned that he would be taking another person's job by accepting the alternative offered.

During cross-examination the appellant confirmed that he was flexible regarding pick up locations for the first two years of his employment.

Determination:

The Tribunal finds that the offer of alternative work made to the appellant was suitable and reasonable in all of the circumstances. Therefore, the appellant is not entitled to a redundancy payment in accordance with S.15 (2)(c). The appeal under the Redundancy Payments Acts, 1967 to 2007, is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)