

**EMPLOYMENT APPEALS TRIBUNAL**

APPEALS OF:  
EMPLOYEE  
-appellant  
against  
EMPLOYER

MN672/2008

CASE NO.  
RP628/2008

-respondent

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Fahy BL  
Members: Mr. D. Morrison  
Mr P. Clarke

heard this appeal at Ballaghadereen on 8th April 2009

Representation:

Appellant: Mr. Anthony McCormack, Siptu, Sligo Branch,  
Hanson Retail Park, Cleveragh, Sligo

Respondent: Mr. John Brennan, Ibec, West Regional Office,  
Ross House, Victoria Place, Galway

The representative for the respondent contended that the claimant was "still on the respondent books" and also on state disability/invalidity payment.

**Claimant's case:**

The Tribunal heard evidence from the claimant. He commenced with the respondent on 12<sup>th</sup> May 1992. He was employed as a meat boner with the respondent.

He injured his back whilst lifting beef and could no longer bone beef. He went to the doctor and got painkillers. He told the foreman.

He then discussed the matter with the manager (aka MR. F) in November 2002. The manager told him the Christmas was approaching and that they would discuss the matter in January and that he would speak to the foreman (regarding work). They spoke in January 2003. The claimant met Mr. F and also three other people, Mr. T Mr. G and Ms L. The foreman told them that there was no light work. Mr. G also said that there was no work and added the comment that "he should know himself" (that the work was lifting and boning).

Mr. F told him that it was best to keep on the medical carts. The company doctor was there on the day and told him that by going on medical certs he would then be on the books and have the benefit of a company doctor. The company doctor had examined him and sent him to Roscommon for an x-ray. The doctor told him that his back was out of line. He was put on invalidity pension.

In 2006 there was a rumour that the respondent outlet in Roscommon was closing. The claimant spoke to his Trade Union advisor and the TU representative told him that he had mentioned it to Mr. F. The factory closed down on a phased basis. Then the factory closed down entirely.

*The claimant was asked about re-deployment and if someone some people were re-deployed to Ballyhaunis . if they did not want to go to Balyhaunis they did not have to*

The Tribunal heard evidence from the Trade Union representative. He explained that a number of people had been made compulsorily redundant and negotiated a package. The factory had been on a three-day week. Some workers sought redundancy but not all that did seek it were allowed redundancy; a number of employees sought redundancy rather than re-deployment and the company accommodated some of those. The others were redeployed and those that were redeployed were given an allowance. The company offered three weeks redundancy pay per year service. There was a ballot of the employees and the ballot rejected the offer. Then the company accommodated thirteen employees.

In cross- examination the witness explained that the company refused to consider the claimant for redundancy. Other workers were also refused redundancy.

To clarify matters the chairman asked the claimant if the company wrote to him during this time and he replied in the negative. The claimant was asked if he was given correspondence form the company to say that there was work in Ballyhaunis and he replied in the negative.

### **Respondent's case:**

The Tribunal heard evidence from the financial controller. The witness opened records of pay from week six of 2002 to week thirteen of 2003. He told the Tribunal that the claimant worked all of those weeks. For the last twenty-six weeks that the claimant worked he earned €164.00 and for the last twelve months he earned an average €152.00.

The witness was asked about re-deploymnet of workers and he explained that the abattoir was to close, that all employees were to be made redundant and to move the boning employees to Ballyhaunis. Two lists of employees were compiled, one list for employees who agreed to go to Ballyhaunis and another list of employees who refused to travel to Ballyhaunis. All employees were discussed excepting those that were out sick. The trade union asked to have the claimant considered; the company refused to consider anyone who was on sick leave because they were not medically fit for work. If those that were out sick reported back to work fit than they would be considered.

It was put to the witness what would happen if the claimant turned up fit for work “tomorrow” and the witness explained that there would “probably be work for him in Ballyhaunis not Ballaghadereen”.

The Tribunal asked the witness about the employees that were unfit and the witness explained that those employees were discussed but the company refused to consider them until they were certified fit.

The witness was asked by the Tribunal to clarify if the claimant was still an employee and he agreed that the claimant was.

He was asked about the number of boning staff they now employed. He explained that they had about the same number but that three months prior they had more boning staff. He further explained, "We were closing the abattoir and moving the boning hall staff, they were given the option, that is, a job there if they want it".

**Determination:**

The Tribunal determine that the claim under the Redundancy Payments Acts, 1967 to 2007, succeeds and the claimant is entitled to a redundancy lump sum based on the following information:

Date of Birth	23 <sup>rd</sup> July 1945
Date employment commenced	12 <sup>th</sup> May 1992
Date employment ended	31 October 2008
Gross weekly pay	€152.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The claim under the Minimum notice and Terms of Employment Acts, 1973 to 2005, fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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