

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE – *appellant*

MN273/2010

RP490/2010

WT135/2010

against

EMPLOYER - *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms B. Glynn

Members: Mr P. Pierson
Ms H. Murphy

heard this appeal at Longford on 9th September 2010

Representation:

Appellant(s) : Mr. Tom Rogers, John J. Quinn Solicitors,
Earl St, Longford.

Respondent(s) : In Person

The decision of the Tribunal was as follows:-

Summary of Evidence

The appellant was employed by the respondent as a lorry driver from August 2006. He drove a rigid lorry delivering tar to various construction sites. There was agreement between the parties that he was paid a daily rate of €100. Due to a downturn in business towards the end of 2008 the respondent discontinued the operation of its rigid lorries. The appellant was given the option of taking over the lease on the rigid lorry or obtaining a license at his own expense which would enable him to drive one of the respondent's articulated lorries. The appellant accepted that he was given the option of taking over the lease on the rigid lorry but this was not a viable

option as he would have been unable to afford the monthly repayments on the vehicle. He denied that he was given the option of obtaining an articulated truck license to allow him to continue working for the respondent. On 3 July 2009 the appellant was told that there was no more work available and he was unemployed. It emerged in evidence that the appellant was supplied with a letter stating that he was made redundant from 3 July 2009 due to a lack of work. The appellant accepted that he received his holiday pay but he was never provided with a contract of employment or payslips.

Determination

The Tribunal is satisfied from the sworn evidence adduced that there was an offer of alternative employment made by the respondent to the appellant. However, this offer, apart from being radically different from the terms and conditions under which the appellant was employed, was an offer of employment for some unascertained date in the future, and was contingent upon the appellant first obtaining, at his own expense, a license to drive an articulated truck. Accordingly the Tribunal is satisfied that a genuine redundancy situation existed and awards the appellant a lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information.

Date of Birth:	20 June 1979
Date of commencement of employment:	15 August 2006
Date of termination of employment:	3 July 2009
Gross Weekly Pay:	€500

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

The Tribunal is also satisfied that the appellant did not receive his requisite notice under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and awards the appellant the sum of €1000.00 being the equivalent of two weeks wages owing under the said Act.

The claim under the Organisation of Working Time Act 1997 fails as the appellant accepted that he had received his holiday entitlements and no further evidence was adduced in respect of this claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

