

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE–**Appellant**

RP423/2010

against

EMPLOYER  
–**Respondent**

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S.C.

Members: Mr. D. Moore  
Mr. J. Flannery

heard this appeal at Dublin on 19 October 2010

#### **Representation:**

Appellant:  
In person

Respondent:  
The Managing Director

The determination of the Tribunal was as follows:

#### **Determination:**

The appellant was employed from February 2006 as a painter. The employment was uneventful until January 2009 when the appellant was laid off for three weeks. Despite some three-day weeks work continued until 9 October 2009 when the appellant was laid off.

The respondent issued the appellant with form RP9 notification of temporary lay-off dated 14 October 2009. The appellant denies having received this RP9 until some time in November 2009 after he had submitted his intention to claim a redundancy lump sum payment by reason of four weeks lay-off in a separate form RP9 on 18 November 2009. The appellant accepts that, within seven days of serving this claim on the respondent, he received counter notice albeit on a form RP9 dated 14 October 2009.

On or about 24 November 2009 there was a telephone conversation between the appellant and the

managing director (MD) of the respondent in which each side accuses the other of being either abusive or aggressive. On the balance of probabilities the Tribunal is satisfied, having seen the text messages the appellant sent to MD before this phone call, that the appellant was seeking to test the respondent's offer of work as made in the counter notice. The Tribunal is further satisfied that the respondent was unable to confirm the offer made in its counter notice to the appellant. 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	27 February 1968
Employment commenced	31 July 2006
Employment ended	18 November 2009
Gross weekly pay	€570-38
Non-reckonable service by reason of lay-off	5 January to 25 January 2009
Non-reckonable service by reason of lay-off	9 October to 18 November 2009
Amount of Redundancy lump sum payment	€4,152-37

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)