

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
EMPLOYEE - appellant

CASE NO.  
RP2431/2009

against

EMPLOYER - respondent

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Hennessy  
Ms. S. Kelly

heard this appeal in Waterford on 23 July 2010

Representation:

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Appellant(s):

Mr. Alan Dillon, SIPTU, Connolly Hall, Summerhill, Waterford

Respondent(s):

No legal representation

The decision of the Tribunal was as follows:-

The appellant sought a redundancy award on the grounds that he had been laid off on 13 January 2009 (from an employment that had commenced on 15 May 2006) and that the respondent's managing director (hereafter referred to as TB) had subsequently signed a notification of redundancy (RP50) form stating 17 February 2009 to have been the appellant's date of termination of employment. The Tribunal was also presented with a copy of a letter dated 16 February 2009 on the respondent's headed paper on which FM from the respondent had stated that "due to a downturn in business" the appellant's "employment with us ceased on 13 February 2009".

The respondent's defence was that it had done everything possible to keep the appellant in employment and that the appellant had been employed by the respondent for several weeks on a week-to-week basis from March 2009 up to the beginning of September 2009 whenever the respondent had work for him. The respondent had medical certificates from the appellant to cover the period from 7 September 2009 up to 2 November 2009 inclusive.

It was conceded that, due to a sharp decline in the respondent's business, the respondent had to let

the appellant go on 13 February 2009. However, the respondent promised that, when business improved (which the respondent expected it to do), the appellant would be the first to be called back. The respondent duly did this in March 2009 and gave the appellant as much work as it could in the following months.

During the period that the appellant was out on medical certificates it was necessary for the respondent to employ another helper on a temporary basis.

TB did not have medical certificates from the appellant for the month of December and had not had any communication from him since early October 2009.

### **Determination:**

The Tribunal has to rely on the notification of redundancy (RP50) form signed by the respondent's managing director. The respondent made the appellant redundant although it could have laid him off. The respondent was in the wrong legally and technically. If the managing director had not signed the RP50 form the respondent could have said that the appellant was on lay-off. When the appellant went back and worked for the respondent that was a new contract.

As well as the RP50 form there was also the letter on the respondent's headed paper stating that "due to a downturn in business" the appellant's employment with the respondent ceased on 13 February 2009. 13 February 2009 was also the date given by the appellant on his claim form as the date on which the appellant's employment ended. However, the respondent's managing director has to be bound by his signing of an official form i.e. the notification of redundancy (RP50) form stating that the appellant's employment ended on 17 February 2009. The Tribunal takes this date to be the termination date rather than suggest that the managing director's signature on an official document can be disregarded.

Accordingly, under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that the appellant is entitled to a redundancy lump sum based on the following details:

Date of birth:	25 February 1970
Date of commencement:	15 May 2006
Date of termination:	17 February 2009
Gross weekly pay:	€416.00

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)