

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP1922/2009

against  
EMPLOYER

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C

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

heard this appeal at Wexford on 14th September 2010

Representation:

\_\_\_\_\_

Appellant:

The appellant in person

Respondent:

Mr. Alan Mooney, Ensor O'Connor, Solicitors, Melrose House, Westgate, Wexford

The decision of the Tribunal was as follows:-

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

The respondent stated that the appellant had not been made redundant but rather he had been dismissed as a result of customer complaints and making too many mistakes. The witness for the respondent submitted copies of two letters, both dated 23<sup>rd</sup> June 2009, which he said were handed to the appellant on that date. The first letter stated that the appellant was being dismissed for reasons including ongoing problems with stock, his lack of concentration while in work and his unpaid absence from work. The second letter stated that the appellant's employment was terminated due to the downturn in the economy. The witness stated that the second letter was given to the appellant as an assistance to him claiming Social Welfare and that this letter was untrue.

According to the respondent another person was engaged to carry out the job of the appellant after he was dismissed. Therefore the respondent contended that a redundancy situation did not exist at that time.

**Claimant's case**

The claimant stated that the only letter he received on 23<sup>rd</sup> June 2009 was the one stating that his employment was terminated due to the downturn in the economy. He also said that the first time he saw the other letter was when a copy of it was sent to him by the Employment Appeals Tribunal on foot of them having received it from the respondent with the form T2 (notice of appearance by the respondent). This copy was sent to the appellant with cover letter dated 30<sup>th</sup> August 2010.

Therefore the appellant contested that his employment was terminated due to his position being made redundant. The appellant had no contact with the respondent after the appellant's dismissal and could not say whether or not another person was taken on to do his job.

**Determination**

In trying to resolve the conflict of evidence between the parties the Tribunal prefers to accept the evidence of the appellant. However the Tribunal must also have regard to the fact that the appellant was replaced by a new employee and that his position was not redundant. For this reason the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

