

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE -**Appellant**

UD2355/2009

RP2695/2009
MN2184/2009
WT1000/2009

against

EMPLOYER -**Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Hennessy
Mr T. Kelly

heard this claim at Kilkenny on 12th October 2010

Representation:

Claimant: In Person

Respondent: A director of the company

The determination of the Tribunal was as follows:

Claimant's Case:

It was the claimant's case that he was employed by the respondent from 2002. Initially he worked on a stone splitting machine. From 2004 the appellant was moved to the quarry where he operated a shovel machine. This work had a less physical aspect to it than operating the stone splitting machine.

By May 2008, work levels had decreased in the quarry and the appellant was placed on a three-day week. This later reduced to a two-day week. There were occasions when he received only one day's work per week and there were weeks when he did not receive any work. The short

time situation continued for almost a year until May 2009. The appellant received social welfare assistance on the days that he had no work. Eventually his local welfare office advised him that his contributions were at an end and he should seek a P45 from the respondent company. The appellant's P45 was issued to him on 29th September 2009. By that time the appellant had not received work from the respondent for a period of months. The appellant posted an RP9 form to the respondent company on 5th October 2009. Sometime later he spoke with the director of the company but he refuted that an offer of alternative work was made to him.

Respondent's Case:

A director of the company gave evidence that when work was diminishing he spoke to the claimant. By this time other employees had been made redundant. The director explained to the claimant that he did not have enough work to retain him on the machine in the quarry but that an offer of alternative work was available on the stone splitting machine. The claimant informed the director that he would be unable to return to this work, due to a physical ailment. In his evidence the director informed the Tribunal that he was aware that the claimant suffered with this physical ailment and that the work associated with the stone splitting machine would aggravate the condition.

When the claimant did not accept the work on the stone splitting machine, the director retained an employee on a part-time basis to operate it and he performed any other work in the quarry himself. The director stated that although work had diminished there was enough work to offer the claimant a full-time position at that time.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal is satisfied from the evidence adduced that a redundancy situation existed in relation to the claimant's employment. Although the Tribunal accepts the evidence of the respondent company that an offer of alternative work was made to the claimant, it is clear that the offer of alternative work was unsuitable to the claimant due to a physical ailment. Accordingly, the Tribunal finds that the claimant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	2 nd September 1957
Date of Commencement:	1 st December 2002
Date of Termination:	5 th October 2009
Gross Weekly Pay:	€450.00

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

The Tribunal having found that a redundancy situation existed in relation to the termination of the claimant's employment dismisses the claim under the Unfair Dismissals Acts, 1977 to 2007, the two being mutually exclusive.

The claimant is not entitled to minimum notice by virtue of having submitted form RP9 to the respondent seeking his redundancy payment. The claim under the Minimum Notice and Terms of

Employment Acts, 1973 to 2005, is dismissed.

The claimant stated that he was not pursuing the claim under the Organisation of Working Time Act, 1997. Accordingly, that claim is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)