

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.
RP184/2010
MN135/2010

EMPLOYEE

against

EMPLOYER

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Harrington

Members: Mr. P. Casey
Ms. H. Kelleher

heard this appeal at Cork on 8th September 2010

Representation:

Appellant(s):

Mr. Diarmuid Enright, UCATT Ireland, Cork District Office,
Carpenters Hall, 6 Father Matthew Quay, Cork

Respondent(s):

No legal representation

The decision of the Tribunal was as follows:-

Appellant's Case

The Appellant commenced employment with the Respondent in May 2003 and his employment ended on 20th December 2009. He worked continuously with the Respondent until 2007/2008, but

from that time onwards the amount of work made available to him by the Respondent dwindled because of the construction industry.

The Appellant stated he was never requested by the Respondent to complete an RP9.

The Appellant accepted that he had declined offers of work. He said he declined such offers because they were for short periods of time (for instance, two weeks). The Appellant explained to the Tribunal that the effect of accepting any short term offer for a period in excess of three days would be to cut him off from receiving Social Welfare payments. He said that he had a family to support and it would take up to 10 weeks for him to have his Social Welfare entitlements reinstated. Accordingly, he said he was simply not in a position to accept offers of short term work without a guarantee that such work would extend for months.

Respondent's Case

The Respondent's witnesses gave evidence of having made 10 job offers to the Appellant, none of which were accepted.

The Respondent said it made a genuine effort to provide work to the Appellant, but it could not guarantee the Appellant that the work would last for more than a few weeks.

The Respondent gave evidence that the Appellant never sought an RP9 or never made any written request for redundancy.

Determination

It was common case that the Appellant did not take up a number of offers of work.

No RP9 or written notice seeking redundancy was ever served by the Appellant.

Having heard the evidence from the parties, the Tribunal is not satisfied that the Appellant was available for work.

The Appellant has failed to satisfy the Tribunal that redundancy occurred. Accordingly, the claims under the Redundancy Payments Acts, 1967 to 2007, and the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)