

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.
RP450/2010
MN217/2010

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 was engaged as a construction operative with the Respondent from 12th September 2005.

The Appellant gave evidence that he had worked for the Respondent for approximately three and a

half years, without any significant break in service. He said he was then put on short time.

In the period January/February 2009, the Appellant worked for the Respondent for four days only.

The Appellant last worked for the Respondent on or about 20th February 2009.

The Appellant suffered a broken arm resulting in surgery on 19th November 2009 and was advised by his doctor that he would then be unable to work for at least four months from that date.

The Appellant said that the Respondent had furnished the Appellant with a letter dated 6th April 2009 in which the Respondent stated that “due to the recent downturn in the construction industry, we have been unable to find suitable employment for him since 20th February 2009. We fully intend to place (the Appellant) back on site once a suitable position arises”.

The Appellant gave evidence that he had personally contacted the Respondent between February 2009 and December 2009 seeking employment.

The Appellant sought his P45 and payment of redundancy on 8th October 2009.

Respondent’s Case

The Respondent’s case was that the Appellant made no effort to contact them since he last worked for them in February 2009.

A witness for the Respondent said he had left a message for the Appellant offering him work in September 2009 and did not receive any response.

The Respondent contested the Appellant’s assertion that he was continuously in contact with the Respondent seeking work.

The Respondent gave evidence that it again made an offer of work to the Appellant on 10th December 2009 and at that time it learned for the first time from the Appellant that he had suffered a broken arm.

Determination

The Appellant confirmed that he never served an RP9 or served any written notice of intention to seek redundancy prior to his contact with the Respondent on 8th December 2009.

Having heard conflicting evidence from the parties, the Tribunal is not satisfied that the Appellant continued to be available for work from February 2009 to December 2009.

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)