

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:  
EMPLOYEE *-appellant*

CASE NO.  
RP1021/2010  
MN709/2010

Against

EMPLOYER *-respondent*

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. T. Ryan

Members: Mr M. Carr  
Mr F. Barry

heard this appeal at Trim on 28th April 2011

#### **Representation:**

Appellant: Triana, Independent Advice & Information Bureau, 13 Store Street, Dublin 1

Respondent: Frank Ward & Co, Solicitors, Equity House, Upper Ormond Quay, Dublin 7

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

#### **Appellant's Case**

The appellant was employed by the respondent from the 14<sup>th</sup> of November 2007 as a general operative engaged in laying road surfaces. The appellant went home to Poland for Christmas on the 19<sup>th</sup> of December 2009; his last day worked was the 18<sup>th</sup> of December 2009. The appellant normally returned after Christmas around the 1<sup>st</sup> of January. In 2010 the appellant delayed his return as he heard from his friend that work was quiet with the respondent. The appellant's friend informed him that there might be work from the 25<sup>th</sup> of January so he attempted to contact the respondent on a few occasions with no response until he spoke to his manager on the 28<sup>th</sup> of January. His manager informed him that there was no work available for him, consequently the appellant requested his P45. The respondent did not make reference to bad weather affecting the appellant's employment. The appellant asked to be made redundant; to which the respondent replied 'I've no money for redundancy.' The appellant received his P45 a week later where he again requested redundancy and was told by the payroll clerk that there was no money in the company.

## **Respondent's Case**

The respondent gave evidence that tar cannot be laid if the ground temperature is below 4 degrees. The week before Christmas 2009 the respondent paid the staff their holidays and released them for Christmas. The respondent does not resume work until the third week in January every year. The respondent had work but due to the adverse weather conditions could not complete it. The appellant was replaced, as there was work available from the end of January.

The respondent's payroll clerk gave evidence that she met the appellant on the 5<sup>th</sup> of February and informed him that work would recommence the following week. The appellant responded by saying he just wanted his P45 to go home.

## **Determination**

The Tribunal find that the appellant terminated his own employment therefore the appeal under the redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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