

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE **-appellant**

RP942/2010

against

EMPLOYER **-respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Browne
Mr. F. Dorgan

heard this appeal in Waterford on 28th March 2011

Representation:

Appellant: Mr. Cyril Cawley, Kinsella Heffernan Foskin,
Solicitors, Otteran House, South Parade, Waterford

Respondent: Mr. Neil J. Breheny, Neil J. Breheny & Co., Solicitors,
4 Canada Street, Waterford

The appellant worked as a bulldozer driver at the City dump spreading rubbish. In May 2007 he developed an illness, which required his attendance at a Dublin hospital for treatment. He informed the respondent that he did not know how long he would be in hospital. The appellant's position is that the managing director (MD) told him that when he was fit to return to work he should contact him.

In June 2007 the appellant's wife contacted the respondent looking for copies of his payslips so that he could claim social assistance. A P45 and a letter arrived in the post while he was in hospital. The appellant's position is further that when he was released from hospital in July 2007 and when he telephoned MD he was told to ignore the P45 because he had a job for life. When the appellant contacted MD in January 2009 and told MD that he was available for work MD told him that there was no work available at the moment and that he should call back. He called six or seven times without reply. When he did speak to MD he asked to be let go so that he could claim redundancy.

The respondent's position was that the appellant's wife told MD in June 2007 that the appellant was very sick and would not be returning to work. She requested his P45 and copies of his payslips and that marked the spot. Another employee filled the appellants position in the company.

The appellant phoned MD looking for work in February 2009. MD called to the appellant's home and offered the appellant work. The appellant said he was working somewhere else but that he would come to him a week later when the work was finished. MD was surprised when he met the appellant the following week and was asked to pay redundancy. He had never made an employee redundant at that time. When a worker left all staff moved up the line. He had a first in, last out policy.

The appellant contacted a solicitor who wrote to the respondent on his behalf terminating his employment by reason of continued lay off on 28 February 2010.

Determination

Having considered all the evidence in this case the Tribunal prefers that of the appellant and is satisfied that a redundancy situation existed in the respondent. Accordingly, the Tribunal is satisfied that the appellant was dismissed by reason of redundancy and is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date of birth	11 th August 1947
Date employment commenced	31 st May 1996
Date Employment ceased	28 th February 2010
Gross weekly pay	€550.00

There was a period of non-reckonable service, by reason of illness from 15 November 2007 until 15 January 2010

This award is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)