

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP1222/2010

against
EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Mahon
Members: Mr. P. Pierson
 Ms. H. Henry

heard this appeal at Longford on 25th March 2011

Representation:

Appellant: Ms Edel Kelly, Edi Centre, 11A2 Mastertech Business Park, Athlone Road, Longford

Respondent: The respondent in person

Appellant's case

The appellant stated that the respondent employed him as a mechanic but that he had also been engaged, for very short periods of time, as a General Operative (construction) by the respondent. The appellant took holidays in December 2009 and before he left he was offered work as a General Operative on a site in Mullingar. However the appellant did not consider this as an offer from the respondent but rather it was an offer of employment from another business. When he reported back for work on 4th January 2010 he was informed that there was no work available and that there would not be any for a couple of weeks. The respondent advised him to go to Social Welfare. A letter was subsequently provided for Social Welfare but this did not satisfy their requirements and consequently the appellant was issued with a P45. This P45 showed a cessation date of 5th February 2010 and was signed by the respondent on 18th February 2010.

The appellant's representative wrote to the respondent on 29th April 2010 and enclosed with that letter a form RP50 requesting payment of a redundancy lump sum. No reply was received to this letter and the form RP50 was not returned to the appellant. Therefore the appellant lodged an appeal to the Employment Appeals Tribunal.

Respondent's case

The respondent stated that the appellant was employed initially taken on as a skilled labourer. The appellant told him that he was a spray painter. After some time in the job the respondent showed

the appellant how to do some mechanical work on the vehicles. The respondent stated that he engaged in the haulage of construction materials but that he also carries out construction work when asked to do so.

According to the respondent, his brother, on behalf of the company, made the offer of employment, in Mullingar, to the appellant in December 2009. He also stated that a subsequent offer of employment in a local garage was made to the appellant and that this employment was to be under contract with the respondent.

The respondent acknowledged having received the form RP50 from the appellant but told the Tribunal that he felt entitled not to reply to this as he had already verbally offered alternative employment to the appellant.

Determination

Having considered the evidence adduced the Tribunal is satisfied that the appellant was placed on temporary lay off from 21st December 2009. The Tribunal finds that no offer of a return to the same work or suitable alternative work within the respondent company was made.

According to the P45 issued by the respondent the date of cessation of employment was 5th February 2010. A form RP50 was sent by the appellant's representative to the respondent on 29th April 2010. Had the respondent been in a position to offer the appellant further employment at that stage then he should have done so by completing part C of this form and returned it to the appellant. Having sent the form RP50 to the respondent and received no reply, the appellant was entitled to consider himself as having been made redundant.

Therefore the Tribunal awards the appellant a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

DOB	27 th January 1978
Commencement Date	1 st April 2006
Period of temporary lay off	21 st December 2009 to 5 th February 2010
Termination date	5 th February 2010
Gross pay	€478.00 per week

This award is made subject to the claimant having been in insurable employment, during the relevant period, in accordance with the Social Welfare Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

