

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE

CASE NO.  
RP1410/2010

against  
EMPLOYER  
under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. W. O'Carroll  
Ms. H. Murphy

heard this appeal at Galway on 26th August 2011

Representation:  
\_\_\_\_\_

Appellant:

Respondent: In person

The decision of the Tribunal was as follows:-

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

The appellant commenced employment on 27<sup>th</sup> April 2001. He was employed as a general operative/driver. He worked a five-day week up until the end of April 2008 for a gross weekly wage of €331.00. Work became sporadic around this time and he was laid off during May and June 2008. He requested redundancy from the respondent but was taken back to work until December 2008.

In January 2009 he was advised that there was no work available to him during that month but in February 2009 he was taken back to work on a three-day week. This position lasted until 11<sup>th</sup> March 2009.

An alternative position was offered to the appellant at this time but it would mean him travelling a journey of approximately 1hr 30mins to and from work each day. He would need to leave his residence at 5.30am and would only return home at 8.30pm.

No extra pay or travel expenses would be provided. The appellant considered this totally unreasonable and advised his employer that he would not be taking up the position. He received his P45 from the respondent in December 2009 citing 11<sup>th</sup> March 2009 as his date of cessation.

**Respondent's Case:**

MK owner of the respondent business stated in his evidence that he mainly did work for the local county council. When this work dried up at the end of 2008 he sought work on the new N6 project. He got work at the site for the appellant but the appellant came to a decision that it didn't suit him. It was a distance of only 12 miles further than work he had been doing previously. Under cross examination MK stated that the job was not continuous as they were filling in for others but as the road was going westward it would have been getting closer to the appellant's residence each week. MK stated that he did pay mileage rates of 32cent per hour but no evidence of this was produced to the Tribunal.

**Determination:**

The Tribunal finds that a redundancy situation existed in relation to the appellant's employment. It was unreasonable and onerous for the appellant to be expected to travel under the new proposals compared to his previous working conditions, with no evidence of any remuneration. The Tribunal therefore finds that his earlier position and conditions of employment had changed sufficiently to create a redundancy situation. Accordingly his appeal under the Redundancy Payments Acts, 1967 to 2003 is allowed based on the following:

Date of Birth:	11 <sup>th</sup> September 1976
Date of Commencement:	27 <sup>th</sup> April 2001
Date of Termination:	11 <sup>th</sup> March 2009
Weekly Gross Pay:	€331.50

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

