

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE-*Appellant*

CASE NO.
RP849/2011

against

EMPLOYER -*Respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. T. O'Sullivan
Mr. O. Nulty

heard this appeal at Mullingar on 16th September 2011

Representation:

Appellant: Mr. Shane Geraghty B.L. instructed by Byrne Carolan Cunningham,
Solicitors, Main Street, Moate, Co. Westmeath

Respondent: A director of the company.

The decision of the Tribunal was as follows:

The director of the respondent company consented to the amending of form T1A to reflect the registered address of the company. He contested the redundancy appeal.

The appellant worked as a foreman for the respondent company. He was absent from work due to sick leave from July 2010. However, despite this he continued to carry out duties associated with his role including attending a meeting in August 2010, meetings in Navan and completing snagging on a housing project. The appellant was aware that the company was hoping to complete a contract of remedial works for a county council. However, he became aware that the county council terminated the contract at the end of November.

Subsequently, he was telephoned by the director of the company on the 17th December 2010 and informed that there was no further work, that an RP50 would follow and that he would get his P45 after Christmas. The appellant attended at the office some time later and the RP50 had been fully completed except for the appellant's signature. A month or two later the appellant telephoned and the director informed him that he had not submitted the RP50 as he believed the appellant was not entitled to redundancy.

The director refuted that he had telephoned the appellant on 17th December 2010 and he refuted that he had signed an RP50 for the appellant. On the 6th July 2010 the appellant informed him that he would be absent due to a back problem. The appellant was therefore not laid off but remained on sick leave. In early January 2011 the appellant informed the director that he had secured work elsewhere and he submitted a claim for wages owing.

During cross-examination it was put to the director that the appellant had worked for the company after July 2010. The director confirmed that the appellant had attended a work-related meeting in August 2010 and conceded that the appellant might have worked a couple of hours for the company on various dates. Had the contract with the county council proceeded the appellant would have been foreman of the project, however as stated by the appellant the contract had not proceeded.

Determination:

The Tribunal having considered the evidence adduced, is satisfied that the loss of the county council contract meant that there was no longer sufficient work to sustain the appellant's position. The Tribunal is satisfied that the appellant is therefore entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	17 th February 1964
Date of Commencement:	5 th January 2004
Date of Termination:	17 th December 2010
Gross Weekly Pay:	€1,164.00

As the period of absence due to illness was not in excess of 26 weeks, this period is fully reckonable for the purposes of calculating the appellant's lump sum.

It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.

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)