

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE –**Appellant**

RP2627/2009

against

MN2135/2009

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: Ms K.T. O'Mahony BL

Members: Mr G. Andrews
Ms P. Doyle

heard these appeals at Cork on 24 September 2010

Representation:

Appellant:

Ms Brede Walsh, North & East Cork Citizens Information Service,
Mallow Citizens Information Centre, 18.1 Market Square,
Mallow, Co. Cork

Respondent:

Ms Colette Neville, McNulty Boylan & Partners Solicitors,
Clarke's Bridge House, Hanover Street, Cork

The issuing of the determination herein was delayed as the parties were hopeful that they could reach a settlement and renew their employment relationship. This did not occur.

The determination of the Tribunal was as follows:

The appellant commenced working as a general labourer with the respondent on 1 February 2003. He was subcontracted to a construction company (AC), initially working on a development in Cork city and from June 2003 in Mallow, where he resides. The respondent had seven other employees working in Mallow with CC. The employment was uneventful until June 2009 by which time the appellant was the last one of the respondent's employees still working in Mallow with CC. On 26 June 2009 the respondent's managing director (MD) was contacted and informed that the appellant's work with CC was coming to an end and to enquire about any further work that the

respondent might have for him.

It was the respondent's position that he offered the appellant a small job which was available in Crookstown, some seventeen miles outside the city, in the week of 6 July but he turned it down. The appellant refutes this.

The appellant then took one week's holidays to give MD an opportunity to provide other work.

During that week arrangements were made that the appellant would commence working in Waterfall, some four miles outside the city, from the following Monday 13 July 2009. MD was to collect the appellant in the outskirts of the city on the Monday morning; thereafter arrangements would be made for his travel to the site. MD was ill on the evening of 12 July 2009 and phoned the appellant to inform him that he would not be going to work the next morning.

It was the appellant's position that MD told him in the phone conversation on Sunday, 13 July, not to report for work in Waterfall as he (MD) was sick. MD never again contacted him to return to work after that. While he (the appellant) made further contact with MD it was to no avail as he had only "bits of jobs" and the appellant was not willing to travel. Further attempts to contact MD were fruitless. The appellant does not have his own private motorised transport.

MD's position on the job in Waterfall was that when the arrangement to collect the appellant was cancelled because of his illness he expected the appellant to make some effort to get to the Waterfall site but he never turned up at that site. MD did his best to get him alternative work but the appellant was only willing to work in the city or Mallow.

The appellant applied for a redundancy payment but the respondent ignored his request. The appellant had no money.

Determination:

The appellant's long term position in Mallow became redundant. The appellant did not have his own private motorised transport and was to a large degree dependent on public transport. The Tribunal is satisfied that no suitable alternative employment was offered to the appellant. The Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth	31 August 1952
Employment commenced	1 February 2003
Employment ended	24 July 2009
Gross weekly pay	€465. 10

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

The Tribunal further awards €1,860.40, being four weeks' pay, under the Minimum Notice

and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)