

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE-Claimant

CASE NO.  
RP744/2011

against

EMPLOYER-Respondent

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr. P. Casey  
Mr O. Wills

heard this appeal at Cork on 26th September 2011

### **Representation:**

Appellant : Mr. Billy Kyne, Regional Organiser, Unite Trade Union, Keyser Street, Waterford

Respondent: No representation listed

The decision of the Tribunal was as follows:

### **Summary of the Evidence**

The respondent is an agency employing workers which it provides to the construction industry. The appellant commenced employment as a general operative with the respondent in September 2001 and he lived in Dungarvan. He was a very good worker and had worked almost full-time with the respondent until the construction work began to dry up and he was put on temporary lay-off on 17 October 2009. He was neither given the RP9 form nor advice when he was laid off. There was a conflict of evidence as to how the employment relationship between the parties was terminated.

It was the respondent's position that the appellant abandoned his employment in that he turned down a series of offers of employment made to him by a director (DR) of the respondent, up to and including an offer made to him in April 2010 on the grounds that the work was too far away or he was doing other work or he did not answer DR's calls. DR told BK (the witness on behalf of the respondent) that the appellant was no longer available for work.

While the appellant denied having received several offers of alternative employment from the respondent over the time of his lay-off he accepted that he had received two offers of work from the

respondent, one in December 2009 in Clonmel which he had to turn down for stated family reasons and the other in Mitchlestown in April 2010. The appellant is a family man with three children and a mortgage. In March 2010 he had written to the respondent enquiring about redundancy and in response to that he was offered a job in Mitchlestown and was told if he did not take it he would not get redundancy from the company. The respondent sent the claimant his P45 in April 2010. The Mitchelstown job was given to another employee. The appellant denied having received several offers of employment from the respondent. He had not been offered any work lasting three months by the respondent.

### **Determination**

There was a conflict of evidence as to the number of offers of employment made by the respondent to the claimant during the lay-off. The respondent could only offer hearsay evidence (oral or documentary) to support his contention that several offers of employment had been made to the appellant. The respondent found itself in this awkward position because DR who had been dealing with the appellant on behalf of the respondent has left the respondent and set up his own business in competition with the respondent and was not present to give evidence. Accordingly, it was not possible to subject the assertions made to the scrutiny of cross-examination.

Having considered the evidence adduced in this case the Tribunal finds that it was reasonable for the appellant to turn down the offers made to him. The Tribunal finds that the employment with the respondent was terminated by reason of redundancy. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 is allowed and the appellant is awarded a statutory lump sum under those Acts based on the following:

Date of Birth: 03 September 1974  
Date of Commencement: 12 October 2001  
Date of Termination: 16 April 2010  
Non-Reckonable Service: 17 October 2009 to 16 April 2010  
Gross Weekly Wage: €600.00

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)

