

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE -*Appellant*

CASE NO.
RP1749/2011

against
EMPLOYER-*Respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Kilkenny on 27th February 2012

Representation:

Appellant: In Person

Respondent: Mr Michael Lanigan, Poe Kiely Hogan Lanigan, Solicitors,
21 Patrick Street, Kilkenny

The decision of the Tribunal was as follows:

Dismissal as a fact was in dispute between the parties.

It was the respondent's case that the pallet distribution section of the company ceased. The employment of the appellant and other employees was affected. The appellant had been driving a rigid lorry as part of his duties.

However, it was the company's position that there were four alternatives available to the appellant and that alternatives were offered to him. Both a director of the company and the Transport Manager gave evidence. The Transport Manager stated that he worked with the appellant on a daily basis. The appellant was present when the rigid drivers for the pallet distribution section were spoken to in or around the end of April. He had also mentioned to the appellant that there was the option of re-training as an articulated lorry driver.

The other three alternatives were that of warehouse operative, raw material intake operative and continuing as a rigid driver in another section of the company. A director of the company gave evidence that she personally offered alternative positions to the appellant. However, the appellant attended at the office on 8th June 2011 and requested his P45.

It was the respondent's case that there were three other employees who were affected at

that time still working in the company albeit in slightly different roles. This was contested by the appellant who stated that this was due to the fact that those employees had an articulated license which he did not have.

It was the appellant's case that when he was informed in or around the end of May 2011 that the pallet distribution section closed he was also informed that there was no further work for him. The appellant refuted that alternative positions were offered to him and stated that had an alternative position been offered he would have accepted the position immediately. The appellant refuted that he had requested his P45 on the 8th June 2011, stating that he had not received it for a period of almost two weeks. The appellant stated that he was informed by a director of the company that there was no further work for him. It was confirmed to the appellant that his position was redundant. As a result the appellant enquired about claiming redundancy and he attempted to serve the company with notice that he intended to claim redundancy but this was unsuccessful.

It was the respondent's case that two letters were sent to the appellant. The first letter was dated 15 July 2011 and the second dated 19 August 2011. The company wanted to know if the appellant was returning to work as the position of warehouse operative could not be kept open indefinitely. The appellant stated that he had not received either letter from the company.

Determination:

It is clear from the evidence that the work which the appellant had been performing had ceased. The Tribunal is not satisfied from the evidence adduced that the company made it clear to the appellant that alternative positions existed within the company or that there was work available.

Consequently, 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:	22 February 1959
Date of Commencement:	1 October 2007
Date of Termination:	3 June 2011
Gross Weekly Pay:	€327.48

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)