

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE -*Appellant*

CASE NO.

RP1399/2011

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: Ms. Anne Flynn, SIPTU, Connolly Hall, Summerhill, Waterford

Respondent: An employee of the company.

The decision of the Tribunal was as follows:

It was the respondent's case that the appellant had left the employment of the company prior to redundancies being implemented. The appellant was out sick from the end of December 2007. He did not return to work after that time and the company did not receive medical certificates from him. The appellant's job was left open but in 2009 it was assumed that the appellant would not be returning to work.

It was acknowledged that the appellant had contacted a director of the company in June 2010 and informed the director that after one more medical certificate, he would be fit to return to work. He said that if no work was available, then the company could make him redundant. Work was offered to the appellant for the following week but he failed to attend for work. The company did not issue the appellant with a P45 at any time but he was removed from the payroll. Due to a downturn in business the company was subsequently forced to implement redundancies.

It was the appellant's case that he was absent from the time of December 2007 due to an injury. He provided social welfare medical certificates to the social welfare office and ordinary medical certificates to the company while he was absent. During the period of illness he had several visits

from the foreman and remained an employee.

Determination:

The Tribunal is satisfied from the evidence presented that the appellant continued to be an employee at the time that the redundancies were occurring. However, the Tribunal notes that the absence due illness in excess of 26 consecutive weeks is non-reckonable for the purposes of calculating the redundancy lump sum payment. Accordingly, the Tribunal finds that the lump sum payment under the Redundancy Payments Acts, 1967 to 2007, should be based on the following criteria:

Date of Birth:	29 th May 1954
Date of Commencement:	12 th September 1989
Non-reckonable service:	3 rd July 2008 to 11 th January 2011
Date of Termination:	11 th January 2011
Gross Weekly Pay:	€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)