EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF: CASE NO.

RP1284/2011

EMPLOYEE **– Appellant**

against

EMPLOYER **–Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr S. Mahon

Members: Mr D. Morrison
Ms A. Moore

heard this appeal at Carrick on Shannon on 29 June 2012

Representation:

Appellant:
Mr Gary Mulchrone, Gilvarry & Associates Solicitors,
Unit 9, N5 Business Park, Moneen Road, Castlebar, Co. Mayo

Respondent:
Mr Terry McNamara, IBEC, 3rd Floor, Pier 1,
Quay Street, Donegal Town

The determination of the Tribunal was as follows:

The appellant was employed in the respondent's automotive component plant from May 2002. The employment was uneventful until the end of 2008 when, because of the economic downturn, the plant was closed for three weeks over the Christmas and New Year period. Shortly after the return to work following this extended break the appellant was one of nineteen employees, from a total workforce of some 170, placed on temporary lay-off from 26 January 2009.

The appellant's position was that he was told by the Human Resource manager (HR) at the start of the lay-off that it would last for some four weeks only. The letter giving notice of lay-off to the appellant from the Plant manager (PM) was personally delivered to the appellant at a brief one to one meeting with PM on 14 January 2009. On 23 January 2009 the appellant attended a union

meeting at which he was given a document providing information regarding the lay-off. The document makes it clear that the respondent did not intend to make anyone redundant unless they elected to terminate their employment voluntarily. It further sets out how employees have the right to claim a redundancy lump sum payment after four weeks of lay-off.

Seven of the nineteen employees laid off from 26 January 2009 availed of this option to claim lump sum payments under the Redundancy Payments Acts. The appellant's position was that he contacted HR by telephone in mid-March 2009 and asked her to process his application for a redundancy payment. He asserts that HR told him that he was not entitled to such payment but gavehim no explanation for this.

Four more employees were laid off from 18 February 2009. From 25 March 2009 the respondent began to recall employees from lay-off. The agreed policy was to call back the employees in reverse order to which they were laid off, in other words the most senior employees were called back first. On 2 April 2009 HR telephoned the appellant to ask him to return to work on 6 April 2009. On 3 April 2009 the appellant telephoned HR. The respondent's position was that the appellant told her that he was on a training course of ten weeks duration and sought to complete the course before returning to work. This request was acceded to and, accordingly, the next most senior employee was called back. The claimant's position was that during these conversations he asked HR to process his application for a redundancy payment. On 9 April 2009 PM sent HR an email directing her to accede to any request for severance from the appellant. The respondent's position was that this was as a result of HR forming the view that the appellant did not want to return to work and approaching PM about her view.

By 29 April 2009 of the 23 employees who had been laid off one was on Carer's leave, seven had claimed redundancy, fourteen had been recalled to work and the appellant was the only one whose status remained unclear. On either 10 or 11 May the appellant and HR met by chance at a service station. The appellant's position was that he again asked for his redundancy to be processed and was told that he was not entitled to this. The respondent's position was that HR asked the appellant to telephone her the next day, which he failed to do. It is common case that HR telephoned the appellant on 12 May 2009 and that during this conversation HR warned the appellant that if he did not return to work at the end of the training course he would be dismissed.

HR wrote to the appellant on 12 May 2009 to confirm that as he was on a training course the respondent accepted that he would not be available to return to work until mid-June. The warning about termination of his employment should he not return to work after the training course was also confirmed. This letter was sent to an address at which the appellant no longer resided and was not received by the appellant. There is a dispute between the parties as to whether the appellant had informed the respondent about his change of address.

The appellant's position was that he left a voice mail for HR on 14 May 2009 for her to make contact with him. On 25 June 2009 HR wrote to the appellant confirming that the respondent considered he had terminated his employment by not returning to work, not contacting the respondent and not responding to the respondent's requests to do so. The P45 was sent to the appellant the following week. Both items were sent to the same address as used for the 12 May letter and again not received by the appellant.

On 1 November 2009 the appellant sent HR an email in which he sought his P45 on account of starting temporary employment. He also informed the respondent of a new address. HR replied to the appellant the following day and posted out a copy of the P45. On 21 November 2009 the

appellant sent an email to HR in which stated that he wished to take redundancy from the respondent and asked for this to proceed as soon as possible.

On 23 November 2009 HR wrote to the appellant, referring to her letters to him of both 12 May and 25 June, stating that in light of those letters it was no longer possible to process a redundancy payment on the basis that not only was he no longer an employee but in a lay-off situation he was required to give notice of intention to claim redundancy in writing and within four weeks after the period of lay-off ended. The appellant's position was that he received this letter on 2 December 2009.

Determination:

It is not in dispute that the appellant was laid off from 26 January 2009. He was called back from lay-off during a telephone conversation on 2 April 2009. The respondent accepted at that time that the appellant could defer his return to work until the end of his training course. During the meeting of 10 or 11 May and the telephone conversation of 12 May 2009 HR made the appellant aware that his position within the respondent was under threat should he not return to work at the end of the training course. The first time the appellant put his request for a lump sum payment under the Redundancy Payments Acts to the respondent in writing was by email of 21 November 2009. The first time the appellant received notification of the termination of his employment was when he received HR's letter of 23 November on 2 December 2009.

Section 12 (1) (b) of the Redundancy Payments Acts, 1967 to 2007 provides

"An employee shall not be entitled to redundancy payment by reason of having been laid off or kept on short-time unless……..after the expiry of the relevant period of lay-off or short-time mentioned in paragraph (a) and not later than four weeks after the cessation of the lay-off or short-time, he gives to his employer notice (in this Part referred to as a notice of intention to claim) in writing of his intention to claim redundancy payment in respect of lay-off or short-time."

The appellant did not give notice in writing until 21 November 2009. He knew that he was expected back at work and the deadline for that was the end of his training course. Whether this was mid-June or early July depending on which date the ten-week course started is immaterial as it wasmore than four weeks before 21 November 2009. The Tribunal is satisfied that the appellant's failure to comply with Section 12 (1) (b) is sufficient to disallow his appeal under the RedundancyPayments Acts, 1967 to 2007.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)