

## EMPLOYMENT APPEALS TRIBUNAL

**APPEALS OF:**  
EMPLOYEE

**CASE NO:**  
RP951/2011

- *appellant*

against  
EMPLOYER

- *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. D. MacCarthy SC

Members: Mr. M. Carr  
Mr. O. Nulty

heard this appeal at Cavan on 2 December 2011

#### **Representation:**

Appellant: In Person

Respondent: In Person

The decision of the Tribunal was as follows:

#### **Background:**

The appellant commenced employment with the respondent on July 1<sup>st</sup> 1998. He started his apprenticeship as an Agricultural Mechanic from which he qualified in November 2003. He was a very good worker and the respondent company was very happy with his performance. His role became central to the Service Department. He reported directly to the Service manager (FD) from the Kells branch.

Due to a downturn in the economy in 2008/2009 five positions had to be made redundant. The appellant was put on short time from December 5<sup>th</sup> 2008 to April 8<sup>th</sup> 2009. Full time work then continued for the appellant until November 2010. During November, December 2010 and January 2011 business was seriously affected by adverse weather conditions. The appellant, and others, worked on a short time basis from November 11<sup>th</sup> 2010.

The appellant worked some days in early January 2011. FD texted him on January 16<sup>th</sup> and 17<sup>th</sup> 2011 (texts were viewed by the Tribunal) with offers of work but the appellant replied he was not available. On January 18<sup>th</sup> 2011 the appellant gave an RP9 form to the Financial Controller (MC) of his intention to apply for a redundancy payment if he was not offered

work within the company.

The RP9 form states in Part B:

**“Notice of Intention to claim Redundancy Lump Sum Payment in a LAY OFF / SHORT TIME situation**

*An employee who wishes to claim a redundancy lump sum because of lay off / short time must serve notice of intention to claim in writing within four weeks after the lay-off /short time ceases. In order to become entitled to claim a redundancy lump sum on foot of a period of lay off, short time or a mixture of both, that period must be at least four consecutive weeks or a broken series of six weeks where all six fall within a thirteen-week period. An employee who wishes to terminate his / her contract of employment by reason of lay off or short time must give his / her employer the notice required by his / her contract or if none is required, at least one week’s notice.”*

On January 19<sup>th</sup> 2011 FD both texted and spoke to the appellant informing him there was work for him. He replied that he had submitted an RP9 form. FD was unaware of this. On January 28<sup>th</sup> the appellant met with the owner (GC) to discuss his redundancy payment. GC was not familiar with an RP9 form. The appellant stated GC informed him he had no work for him at that time. He also informed GC that he had only seven days to respond to the RP9 form he had submitted on January 18<sup>th</sup> 2011.

Part C to be completed by the employer states:

**“Counter Notice to Employee’s Notice of Intention to claim a Redundancy Lump Sum**

*Notification in respect of this part must be in writing and must be given to the employee within seven days of service of the employee’s notice.*

***I contest any liability to pay you a Redundancy Lump Sum on the grounds that it is reasonable to expect that within four weeks of the date of service of your notice, namely,***  
*(date of service)*

***you will enter upon a period of employment of not less than thirteen weeks during which you will not be on lay off or short time any week.***

Signature of Employer \_\_\_\_\_ Date: \_\_\_\_\_

On February 4<sup>th</sup> 2011 GC contacted the appellant to meet him on February 7<sup>th</sup> 2011. On February 7<sup>th</sup> 2011 GC informed the appellant that he would be returning to work on February 14<sup>th</sup> 2011, which would be later confirmed. They again spoke on February 11<sup>th</sup> 2011 where the appellant was advised of the offer of employment from February 14<sup>th</sup> 2011. The appellant advised GC that he would not be starting work as he had submitted the RP9 form. The appellant later advised GC by telephone that he would not be starting work.

**Determination:**

The notes set out in form RP9 quoted above reflect the terms of Sections 12 and 13 of the Act of 1967 and the appellant correctly followed the procedure in Section 12. In substance the respondent did offer work in response but did not comply with the letter of the law set out in Section 13:

*(1) Subject to subsection (2), an employee shall not be entitled to a redundancy payment in pursuance of a notice of intention to claim if, on the date of service of that notice, it was reasonably to be expected that the employee (if he continued to be employed by the same employer) would, not later than four after that date, enter upon a period of employment of not less than thirteen weeks during which he would not be laid off or kept on short-time for any week.*

*(2) Subsection (1) shall not apply unless, within seven days after the service of the notice of intention to claim, the employer gives to the employee notice (in this Part referred to as a counter-notice) in writing that he will contest liability to pay to him a redundancy payment in pursuance of the notice of intention to claim.*

The Tribunal therefore finds that the appellant is entitled to a redundancy payment based on the following:

The appellant is entitled to a redundancy payment based on:

Date of Birth:	01 March 1982
Service from:	01 July 1998 to 18 January 2011
Non-reckonable service:	Nil
Normal weekly remuneration:	€ 594.00
Amount of redundancy payment:	€ 15,515.28

This award is subject to the appellant having been in employment which is insurable for all purposes under the Social Welfare Consolidation Act 2005.

Sealed with the seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)