

EMPLOYMENT APPEALS TRIBUNAL

APPPEAL OF:

CASE NO.

EMPLOYEE
- **appellant**

RP213/2011

against

EMPLOYER
- **respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms E. Kearney BL

Members: Mr T. L. Gill
Mr T. Brady

heard this appeal at Tullamore on 16 February 2012

Representation:

Claimant:

Mr Niall Phillips, SIPTU, Unit 23A Lough Sheever Corporate Park,
Robinstown, Mullingar, Co. Westmeath

Respondent:

Mr Anthony Murphy, Regan McEntee & Partners Solicitors,
High Street, Trim, Co. Meath

The decision of the Tribunal was as follows: -

The appellant was employed as a truck driver from 6 September 2000. The employment was uneventful until 9 January 2009 when the appellant, along with the other six drivers, was placed on a three-day week following the liquidation of the respondent's largest customer. The appellant was placed on lay-off from 20 March 2009.

Following a return to work sometime in May 2009 the appellant was involved in a crash in June 2009 in which the truck he drove was written off. The appellant was then again laid off pending replacement of the truck which occurred in September 2009 by which time the appellant had developed a back problem seemingly unrelated to the June 2009 crash. This back problem led to the

appellant undergoing surgery in his homeland in November 2009. The appellant worked for the respondent briefly in January 2010 but was unable to lift 50kg freight as he had previously.

The respondent's position is that in early February 2010 the appellant sought his P45 from the managing director (MD) and that a P45 was issued. It is the appellant's position that he was again placed on lay-off and received a P45 in February 2011. It is common case that on 24 November 2010 the appellant served an RP9 form on the respondent to claim a redundancy lump sum payment by reason of lay-off. The respondent accepts that no counter-notice was given to this claim for a lump sum payment MD telling the Tribunal that nothing was done with the RP9 as the appellant was no longer their employee.

Determination

Neither side was in a position to furnish the Tribunal with a copy of any P45 at the time of the hearing. The respondent had provided copies of both a universal social charge (USC) certificate and a P45 report from their payroll system both showing a termination date of 9 February 2010. The parties were afforded the opportunity to assist the Tribunal in this regard subsequent to the hearing. On 6 March 2012 the Tribunal received from the appellant's representative copies of a P45 and a USC certificate both of which show a termination date of 9 February 2011 for the appellant. No documentation was received on behalf of the respondent. If the respondent felt that the appellant was no longer their employee in November 2010 when form RP9 was served it was open to them to write to the claimant stating he was no longer an employee. Equally it had been open to the respondent to write to the appellant in February 2010 acknowledging acceptance of his resignation if that was what they felt the position to be. The appellant provided copies of four letters from the respondent throughout 2010 which state that the appellant is on temporary lay-off. For these reasons the Tribunal is satisfied that the appellant was still an employee when he submitted form RP9 in November 2010. It follows 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	25 August 1954
Employment commenced	6 September 2000
Employment ended	6 December 2010
Gross weekly pay	€718-89

There were three periods of non-reckonable service, by reason of lay-off, from 20 March 2009 until 15 May 2009, from 15 June 2009 until 15 September 2009 and from 15 January 2010 until 6 December 2010.

This award is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period. It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)