

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE  
*-appellant*

CASE NO.  
RP2242/2011

Against

EMPLOYER  
*-respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr G. Andrews  
Mr O. Wills

heard this appeal at Tralee on 30th July 2012

#### **Representation:**

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Appellant: Mr Sean Ormonde, Employment Matters, Suite 9, The Atrium,  
Canada Street, Waterford

Respondent: Thomas J O'Halloran, Solicitor, Upper Ashe Street, Tralee, Co Kerry

#### **Respondent's Case**

The respondent is a commercial body works company. The claimant was employed in 1969 as a welder. The appellant's health began to suffer in 2008 which led to the appellant being absent for significant periods. In 2009 the appellant worked 104 days. In 2010 the appellant worked for 12 weeks and did not work at all in 2011. The appellant contacted the respondent on a very regular basis requesting to return to work. The respondent admits that he 'probably did fob him off in 2011' as there was very little work and suggest the appellant extend his sick leave. As a result of the shortage of work redundancy was discussed; the respondent said he would speak to the accountant. The result was that the respondent could not afford to pay the appellant's redundancy so no offer was made. In July 2011 the respondent replied to a letter from the appellant's representative inviting him to return to work 'at any time.' As of the hearing date there is work and a position available for the appellant.

## **Appellant's Case**

In November 2010 the appellant rang on a weekly basis requesting to return to work; he was always told things were quiet and to call back next week. The respondent offered him 'a few days a week or take the money', the appellant accepted the redundancy. The appellant was certified unfit for work from May 2011 and due to his health could not work in the respondent premises again. The appellant's sister took over contact with the respondent; in April 2011 the respondent informed her that the redundancy forms were 'with the accountant.'

## **Determination**

The Tribunal find that, on balance the appeal under the Redundancy Payments Acts 1967 to 2007 fails. The appellant was offered his job back in July 2011 and his job is still available. The evidence is not sufficient to establish that there was an individual agreement to make the appellant redundant. The Tribunal note that the appellant is still an employee of the company and as soon as he is available for work he can return to his position.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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