

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE - **Appellant**

RP2771/2011

against

MN2193/2011

EMPLOYER - **Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr D. Morrison
Ms A. Moore

heard these appeals at Sligo on 3 October 2012

Representation:

Appellant:

Ms Elaine Coghill, Anne Hickey Solicitor,
Wine Street, Sligo

Respondents:

Mr Trevor Collins, Mullaney's Solicitors,
Thomas Street, Sligo

The determination of the Tribunal was as follows:

The appellant worked as a truck driver for the respondent from 1995. There was a dispute between the parties as to whether the employment had been continuous. The respondent's position was that the appellant left the employ in 2002 for approximately two years before returning in April 2004. The appellant's position was that he had been unable to work in that period as a result of a back injury caused when operating a tip truck for the respondent.

On his return to work with the respondent from 2004 the appellant drove both a tip truck and an oil tank truck. From November 2008 the appellant's work became seasonal as he no longer drove the tip truck and the oil tanker was engaged in the delivery of oil used in the dairy industry. The off-season ran from late November until early March.

From August 2010 the appellant was put on a three-day week and he last worked for the respondent

on 26 November 2010, the end of the oil season. Around this time the appellant's hazchem certificate expired. The appellant's position was that, during the off-season there was an argument on the phone between the parties when the respondent accused the appellant of spreading rumours about the respondent which had resulted in the respondent coming to the attention of the authorities. While the appellant was not called back to work for the 2011 season it was common case that the oil tanker work carried on and that another driver had performed the work.

Determination:

In circumstances where the seasonal work of oil tank driver still existed and a driver was hired to carry out this work, the appellant's hazchem certificate had expired and the appellant asserted that there had been an argument between him and the respondent. The Tribunal is satisfied that, whatever the circumstances in which the employment came to an end, it was not a redundancy situation. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 must fail. The Tribunal not being satisfied that the appellant was dismissed the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)