

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

- appellant

MN1399/2011
RP1723/2011

Against

EMPLOYER

- respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. N. Russell

Members: Mr. J. Horan
Mr. F. Dorgan

heard this appeal at Carlow on 19th October 2012.

Representation:

Appellant:
Respondent:

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant was employed as a mechanic and commenced employment on 2nd April 2007. Up to December 2010 he worked a five day week commencing work at 9.00 am each day. In the middle of December 2010 he returned to Poland on holidays. When he came back to Ireland there was very little work available for him. In the following few months he only worked a few days a week. Sometimes he would be on his way to work and would receive a telephone call informing him that there was no work available for him.

He sought letters from his employer to seek social welfare payments but was told the situation

at work might improve.

He asked permission to return to Poland for two to three weeks at Easter April 2011 and had no return ticket booked at that time. He returned to Ireland in early May 2011. He went to work but no work was available for him. He was told he would be contacted by telephone. As he was not contacted thereafter he went to work the following Monday. On 10th May 2011 he was furnished with his P45 and P60.

The appellant did not have alternative work and it was never his intention to quit his job at this time.

The following week he contacted the respondent's daughter MK seeking his redundancy payment. She explained to him that as he had left his employment he was not entitled to a redundancy payment. The appellant did not agree with this.

Respondent's Case:

The respondent owns a garage and is engaged in the selling and servicing of Mercedes Benz cars for over thirty years. It is a family run business with a staff of seven. The appellant was one of five mechanics employed by the respondent.

The appellant was a good employee and the respondent EK respected him, was fair and compassionate. If the appellant did not come to work on any particular day he was not paid for that day.

The appellant returned to Poland on holidays on 15th April 2011 and was due back at work on 26th April 2011. The appellant returned to work instead on 5th May 2011. He arrived in at 11.30am that day. As no work had been scheduled for him EK asked the appellant to give him a call the following Saturday or Sunday. The appellant did not contact him.

On 10th May 2011 the appellant came into work and asked to be furnished with his P45. He had secured work elsewhere. EK felt hurt and disappointed but told him that if the new job did not work out for him there was still a job for him in the company. EK increased his workload by taking on the appellant's role in the period mid May 2011 to mid September 2011. On 10th September 2011 the respondent's son replaced the appellant in his role.

The appellant was furnished with his P45, his P60 for the previous year and a payslip for €100.00 being holiday pay owed to him.

Determination:

Having considered the totality of the evidence the Tribunal is of the view that the appellant was not made redundant from his employment. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 fails. 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)