

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE – *appellant*

RP2876/2011

Against

EMPLOYER – *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr. D. Morrison  
Mr M. McGarry

heard this appeal at Castlebar on 3 December 2012

Representation:

Appellant(s) :

John Dillon Leetch & Sons, Solicitors, Main Street,  
Ballyhaunis, Co Mayo

Respondent(s) :

Mr Pat Moran, Solicitors, Mountain View, Castlebar, Co. Mayo

### **Determination**

At the commencement of the hearing the name of the respondent was corrected and agreed by the parties.

The appellant commenced employment with the respondent in April 2000. He became ill and underwent surgery in February 2010. At the time he went out on sick leave he was working on a three-day working week and had been told there was only enough work for the respondent and his son. He requested his P45 from the employer following his surgery and treatment for his illness. He wished to apply for a driving job which would be more suitable for him following his illness and required his P45 for this purpose alone. In the meantime the driving job fell through. He called to the respondent regularly and was told by FMcN that he would look after him and sort him out with money. He understood this to mean a redundancy payment. On one occasion in Sligo he repeated four times that he wanted to treat him right. He was certified by his doctor fit to return to light work in late 2010. He was never contacted by the respondent

regarding returning to work.

The respondent (FMcN) acknowledged that the appellant was a good worker. The appellant informed him of his illness and the last time he worked for him was February 2010. He never returned to work but called to the workshop on occasion where he allowed him use equipment or materials for his own use as a gesture of good will. He at no time told the appellant that he was redundant and had work for him. He was replaced by AR as there was plenty of work. He got the impression the appellant was not interested in returning. The appellant never came to him asking to return and when he requested his P45 in writing to his accountant he understood that he was taking up other employment. The respondent denied terminating employment.

The Tribunal having carefully considered the evidence adduced by both parties at the hearing accept that the appellant was a hardworking and conscientious worker and accept his evidence regarding the promise that he would be looked after by the respondent. The request by the appellant to the employer for his P45 should not be conclusive of terminating employment.

However, the Tribunal heard in evidence that the position held by the appellant was not redundant and that the appellant was replaced by the respondent. Accordingly, this claim under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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