

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE – *appellant*

RP1877/2011

Against

EMPLOYER 1 – *respondent 1*

EMPLOYER 2 – *respondent 2*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr. P. Casey  
Mr J. Flavin

heard this appeal at Cork on 13th September 2012

Representation:

Appellant(s) : in person

Respondent(s) : respondent in person

The respondent disputed the appellant's entitlement to a redundancy payment on the basis that the appellant had left the respondent to take up other employment.

#### **Summary of Evidence.**

The respondent's business involved the installation of farm equipment. The work was seasonal and normal working hours were 8.30am to 4.30pm to allow farmers carry out necessary work each day. The appellant commenced employment with the respondent in April 2008. An arrangement was in place between the parties allowing the appellant to commence work at 10.30am two mornings per week as he was working on a farm relief scheme (FRS) from 6.30am.

In July 2010 the respondent put appellant on a three-day week. In November 2010 the appellant told the respondent that he was seeking further work on the FRS to make up for the two days he had no work. However, he was at all times hoping to return to a five-day working week. The respondent did not have a problem with this and told him they would work around it. The respondent had no work for the appellant during December 2010, only one day's work during the first week of January 2011 and only two days' work during both the second and third

weeksof January 2011.

The FRS network offered the appellant four to five hours work five mornings per week. On or around 21 January 2011 the appellant informed the respondent that he would be working five mornings per week from 24 January and would be available from 10.30/11.00am. The respondent had no problem with this and would send him his P45 so that his tax credits would be in order. The respondent did not thereafter reply to the appellant's texts informing him of his availability for work. The respondent had not offered him any work after 21 January 2011. In late January the respondent sent the appellant his P45. He also received forms from the respondent for his signature regarding working his notice. The appellant became concerned and sought the advice of the CIC. He did not sign the forms. On 21 February 2011 the appellant served Form RP9 on the respondent seeking a redundancy payment. The respondent did not make any offer of work to the appellant after receipt of Form RP9. The respondent was annoyed by the appellant's claim. It was respondent's position that the appellant had left to take up alternative employment.

### **Determination**

The Tribunal accepts the appellant's position that the work with the FRS was to make up for the hours he had lost with the respondent. The appellant had not terminated his employment with the respondent in late January 2011. It was common case that the appellant had been on short-time hours with the respondent during the first three weeks in January 2012 and had not been given any work after 21 January 2011. On 21 February 2011 the appellant submitted an RP9 to the respondent. The respondent did not offer him work thereafter. The Tribunal finds that a redundancy situation existed and awards the appellant a lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of Birth:	14 May 1986
Date of Commencement:	20 April 2008
Date of Termination:	3 March 2011
Periods of Unreckonable Service	1 to 31 December 2010 & 22 January to 3 March 2011.
Weekly Gross Pay:	€500.00

The award made under the Redundancy Payments Acts, 1967 to 2007 is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period. As the appellant had not been on short-time/lay-off for more than a 52-week period, applying section 15 of the Redundancy Payments Act 1967 as amended the appellant's redundancy lump sum payment is calculated on the basis of a five-day working week.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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