

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:	CASE NO.
EMPLOYEE 1 – First Named Appellant	RP11/2011
EMPLOYEE 2 – Second Named Appellant	RP16/2011

against

EMPLOYER –**Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire B. L.

Members: Mr B. Kealy
Ms N. Greene

heard these appeals at Dublin on 1 March
and 23 April 2012

Representation:

Appellants:
Ms Barbara Mebtouche, Triana Independent Advice & Information Bureau,
13 Store Street, Dublin 1

Respondent:
Ms Mairead Crosby on the first day, Mr Eamonn McCoy on the second day,
Both of IBEC, Confederation House, 84-86 Lower Baggott Street, Dublin 2

The determination of the Tribunal was as follows:

The appellants worked as cleaners for the respondent's industrial division for over four years. The industrial division specialises in the cleaning of large building projects prior to their handover to the owner on completion of the building works. In June 2010 cleaning work was completed on two large projects and, due to the downturn in the economy there were no other projects for the industrial division to clean. Accordingly, 18 June 2010 was the last day that the appellants worked for the respondent. Neither of the appellants received notice of lay off but it was accepted that they were told by their supervisors that there was no work for them. The appellants' position was that their supervisors told them that they did not know how long it would be before more work became available.

On both 9 August and 27 September 2010 financial controllers at the respondent wrote to the second named appellant to confirm he was an employee of the respondent and to state that there was currently no work for him. On or around 27 September 2010 the appellants, along with some colleagues, visited the respondent's offices unannounced and met the operations manager OR. The respondent's position was that the appellants were looking for letters in the same vein as the second named appellant had already received and indeed did receive the same day, that is for Social Welfare purposes. The respondent's position was that OR was unable to provide these letters as there was work available for the appellants in the respondent's office cleaning division. OR's problem was that she had been unable to contact the appellants.

The respondent's position was that on 29 September 2010 OR wrote to both appellants saying the respondent was happy to offer work in their office cleaning division. The appellants were requested to contact OR to arrange commencement as positions were available for immediate start. The appellants' position was that neither of them received this letter. It was further the respondent's position that OR again wrote to the appellants on 14 October 2010 to ask whether they wished to work within the office division. Again the appellants' position was that neither of them received the letter.

On 29 October 2010 the respondent received forms RP9 from the appellants in which they claimed redundancy lump sum payments by reason of lay off. It was common case that the respondent did not offer counter notice to those claims on the part of the appellants. There were various other letters from the respondent to the appellants. Some the appellants acknowledge having received, others they deny having received.

On 12 November 2010 the managing director (MD) of the respondent wrote to the appellants acknowledging receipt of their RP9 forms, suggesting they had been received on 8 November 2010. The appellants were asked to confirm their availability for work at which time they would be offered suitable work. They were requested to indicate the days and times they were available for work.

It was submitted on behalf of the respondent that by virtue of the letters of 29 September and 14 October 2010 the respondent had made offers of suitable alternative employment which the appellants had refused thereby disentitling themselves to lump sum payments under the Redundancy Payments Acts.

Determination:

Leaving aside the issue of the dispute as to whether they were received by the appellants, even if the Tribunal were to accept the contention of the respondent that the letters of 29 September and 14 October 2010 constitute offers of suitable employment, which it does not, the fact remains that RP9 forms were served on the respondent on 29 October 2010. The letters of 12 November 2010 are not, regardless of their date, which is more than seven days after service of the RP9, offers of thirteen weeks work as required under the Acts in order to constitute a counter-notice.

Accordingly, the Tribunal is satisfied that the appellants are entitled to lump sum payments by reason of lay off under the Redundancy Payments Acts, 1967 to 2007 based on the criteria set out in the following schedule

Appellant	Date of Birth	Employment Began	Employment Ended	Gross Weekly Pay
1st Named	18/04/1961	27/01/2006	27/10/2010	€265-06
2nd Named	29/04/1970	17/09/2005	27/10/2010	€313-55

These awards are made subject to the appellants having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)