

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE – *appellant*

CASE NO.  
RP117/2012

Against

EMPLOYER – *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr D. Hayes BL

Members: Mr J. O'Neill  
Mr T. Brady

heard this appeal at Drogheda on 13th February 2013

Representation:

Appellant(s): In person

Respondent(s): Mr Patrick Callan  
Patrick R Callan & Co  
Malta House, Sean O'Carroll Street, Ardee, Co Louth

The decision of the Tribunal was as follows:-

The respondent owns a butcher's shop, which he took over from his father in 2005. The appellant began working for the respondent's father as a school-leaver in 1998 and continued in employment until November 2011. The Tribunal was told by the appellant that in about March 2010 he was put onto short-time. The respondent's case was this process had commenced in May 2009. Nothing turns on this and the Tribunal is satisfied that from, at least, March 2010 the appellant was on short-time. Through much of 2010 he worked a three-day week and then in about March 2011 he was put onto a two-day week. It appears that the appellant was never formally notified of this short-time. The appellant told the Tribunal how this was causing some financial difficulties and he felt that he had no choice but to seek more work. As a result, in November 2011, he served an RP9 form on the respondent. About ten days later the respondent came back to the appellant and offered him a period of thirteen weeks full-time employment. The appellant told the Tribunal that he was happy with that. However, later that day the respondent told the appellant that, while he could have thirteen weeks, they would be standing around looking at each other for much of it. The appellant also told the

Tribunal that the respondent told him that the respondent's accountant would "have something for him in a few weeks", by which he understood the respondent to mean that he would be given a redundancy payment. The respondent told the Tribunal that he could not remember whether he had said that. The Tribunal is satisfied that the appellant was told that and that it meant that he would be given a redundancy payment. The counter notice given by the respondent in response to the RP9 form was not given in writing as required by s.13 of the Redundancy Payments Acts.

The Tribunal is satisfied that the appellant was on short-time for a period in excess of the statutory requirement for seeking a redundancy payment. The Tribunal is satisfied that the respondent did not give a counter notice in writing. The Tribunal is satisfied that the appellant was given to understand that the oral offer of thirteen weeks work would not come to pass and that he was given to understand that he would be given a redundancy payment. It was of note that the appellant told the Tribunal that, in serving the RP9 form, he was hoping to provoke an offer of at least thirteen weeks full-time work. Had such been realistically on offer, the Tribunal accepts that the appellant would have taken it. The Tribunal also notes that, after the appellant left the respondent's employment, the respondent's other employee, also on short-time, did not have his hours increased. This further suggests that the option of thirteen weeks of full-time work was not realistically there.

**Determination:**

The Tribunal is satisfied that the appellant is entitled to a redundancy payment under the Redundancy Payments Acts, 1967 to 2007, based on the following information:

Date of Birth: – 27<sup>th</sup> May 1980

Date of Commencement of Employment – 30<sup>th</sup> June 1998

Date of Cessation of Employment – 25<sup>th</sup> November 2011

Gross weekly pay - €195.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal accepts that the respondent was experiencing difficult trading circumstances and that he was trying to do his best by his two employees. However, the appellant does have statutory benefits to which he is entitled. The Tribunal also notes that both appellant and respondent spoke of their previously excellent working relationship. It further notes that the respondent still has a position open and is hopeful of some expansion of his business. While it

is not a matter for the Tribunal, it hopes that the circumstances that allowed these two men to previously work so well together might arise again.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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