

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE – *appellant*

RP3135/2010

MN2275/2010

against

EMPLOYER – *respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney BL

Members: Mr. W. O'Carroll  
Ms. H. Henry

heard this appeal in Tullamore on 23<sup>rd</sup> March 2012

Representation:

\_\_\_\_\_

Appellant: In Person

Respondent(s): Ms. Sorcha Houlihan, Desmond A. Houlihan & Son, Solicitors,  
John's Place, Birr, Co. Offaly

#### **Respondent's Case**

RF was a director of the business which is a pig-fattening unit. The pig-fattening unit belonged to her husband's father and it had been leased out for the past twenty-five years. They took over the lease and hired a number of employees to help with the refurbishment. The refurbishment was substantial and lasted for six months. As the work came to an end the employees left on a staggered basis. The appellant was made redundant in 2008 and worked for another employer. In February 2009, during slurry-spreading season, the respondent had extra work and asked the claimant to help.

The husband of RF was working on the family farm at that time and was also working in the pig-fattening unit. This was causing some strife with a brother who also worked on the farm. They agreed that the appellant would work on the farm to free up RF to work in the pig-fattening unit and that the appellant would be paid by the respondent.

During cross-examination RF said if there was no work for the appellant on the farm, he would

help out in the pig-fattening unit.

### **Appellant's Case**

The appellant started working with the respondent on the 15<sup>th</sup> June 2007. He helped with the refurbishment and worked six days a week. In December 2008, he was told there was no work available for him so he went home for five weeks. When he returned, RF was injured and he worked for a week on the farm. He would get calls to help transport the pigs and continued working part time until he was offered full time work on the farm.

During cross-examination the appellant said he went for an interview for another job in January 2009, when he was told there was no job for him. He stayed in a house belonging to the respondents. He was paid his notice on both occasions.

### **Determination**

It is the employer's contention that the appellant was working for two employers and he did not have continuous service to meet his claim under the Redundancy Payments Acts.

The Tribunal has carefully considered the evidence and in particular the Revenue documents to show the respondent as the employer of the appellant while he was working on the farm. RF also said in evidence that the work on the farm and pig-fattening unit overlapped on occasion and the appellant worked in the pig-fattening unit when there was no work for him on the farm.

The Tribunal is satisfied that appellant was dismissed by reason of redundancy. Accordingly the Tribunal awards him a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of birth:	20 <sup>th</sup> April 1977
Date of commencement of employment:	15 <sup>th</sup> July 2007
Date of termination of employment:	25 <sup>th</sup> July 2010
Gross weekly pay:	€594.17

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

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fails because it was not established that the respondent had been in breach of the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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