

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – *appellant*

RP200/2011

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms E. Kearney
Members: Mr. W. O'Carroll
Ms H. Henry

heard this appeal at Tullamore on 23rd March 2012, and 03rd December 2012

Representation:

Appellant: Mr Henry O'Shea, SIPTU, Unity Hall, Church Street,
Tullamore, Co Offaly

Respondent: Mr. Breffni Gordon B.L. instructed by Mr. James M Donohoe, Donohoe
James M & Co, Drumfarn House, Railway Road, Cavan

Background:

This appeal ref: RP200/ 2011, was heard in conjunction with appeal RP341/ 2011.
It was agreed at the commencement of the hearing that the T1A would be amended to include the correct name of the respondent limited company.

Appellants Case:

PC operated a truck for the respondent which was used to clean drains and septic tanks. He started with PL Plant Hire in 1998 which was taken over by the respondent in 2008. They operated from a yard in T which closed and the work was transferred to another yard ten minutes away in K. Both yards were in Offaly.

PC would bring his vehicle home and park it outside his home. He did this to answer call outs from the Local Authorities. In September 2010, PC was instructed to leave the truck in the yard and not to bring it home. The yard was fifteen kilometres drive from his home and his wife used the family car to bring his children to school.

He had two meetings with the respondent. At the second meeting he was told that they were closing the yard in Offaly and moving to another yard in Cavan. He told the respondent he had only one car and was told to get another.

As the work slowed he might only get one or two days a week. He went to his Trade Union in November 10, where he filled out a RP9 form claiming redundancy. He brought this to the respondent who could not offer him continuous work.

During cross-examination PC said he was not aware changes were happening. He did not object to moving to the new yard in Offaly and had worked in Galway and Monaghan and would go where the work was. He received a subsistence allowance of €8 to €15 per day. He was also entitled to a bonus

He was given a contract of employment which he refused to sign. He had signed a contract when he began his employment in 1998.

He received a letter from the respondent regarding the move to Cavan and was offered a €15 petrol allowance. The yard in Cavan was forty-five minutes away from his home. He only had one car and refused to go.

He asked the respondent for thirteen weeks continuous employment and was told by OP that he did not have the work for himself. He was on short time.

EC lives in Laois and worked for the respondent driving a truck which was used to clean drains and septic tanks. He did not object when the yard was moved to K. If he had to drive to Cavan it would take him two hours. If he was due in Galway at 8am he would have to leave his house at 4am, drive to Cavan, collect the vehicle and drive to Galway. He would then have to drive to Cavan, collect his car and drive home. It was too long of a distance.

He attended a meeting to discuss the downturn.

During cross examination EC said the road to Cavan was a bad road. He had been in the Cavan yard twice. It was a 120 mile round trip and he could not afford to do this. He used his own car and was offered a €15 petrol allowance. He never brought a truck home and did receive a contract of employment from the former employer.

He was told by the respondent that they were looking a yard nearer to Offaly.

Respondents Case:

JP told the Tribunal the respondent company was established in 2007. They bought the business where the appellants worked in 2008. When they took over they had a good relationship with the staff. The business has trucks and machines that do ground works and drainage. The staff would drive the trucks to a location and carry out the work as required.

During the good times the company did a lot of work for the Local Authorities. The appellants went to different locations and could work from 8am to 8pm. There was a bonus scheme in place where the busier the truck was, the more of a bonus was paid.

When the boom ended, they had to make changes. Staff were put on a three day week working from 8am to 3pm each day. Their competitors began tendering for Local Authority work. The rates they were getting were reduced and diesel was increasing. The company started to lose money. They asked the lads to keep an eye out for work while they were on the road.

They had trucks in Cavan and Offaly and decided to close the yard in Offaly. They had four meetings with the staff. OP looks after the day to day work, JP looks after the finances. Staff were told verbally and in writing and were made an offer.

PC and his Union representative met with OP about the move. He asked EC to move on a temporary basis until he could find a cheaper yard in Offaly. The company is still losing money and has moved to septic tanks.

It was brought to his attention that PC had applied for redundancy due to short time. He checked and made sure that PC was working three days. There was work for the appellants. At no stage did the respondent tell the appellants that they did not have thirteen weeks work for them.

JP said it would take the appellants an hour in slow morning traffic to get to the yard in Cavan. PC had a truck outside his home and the company got complaints from the neighbours. It was then decided to park it in the yard. They wanted to work with the appellants.

Determination:

Having heard the evidence adduced in this case the Tribunal unanimously determines that a redundancy situation did not exist in this case. accordingly, the appeal under the Redundancy Payments Acts 1967 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

