

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.  
RP1121/2012

EMPLOYEE *-appellant*

Against

EMPLOYER *-respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney B.L.

Members: Mr T. Gill  
Ms H. Murphy

heard this appeal at Ennis on 24th June 2013

#### **Representation:**

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Appellant: Richard John Halpin, Kerin Hickman & O'Donnell, Solicitors,  
2 Bindon Street, Ennis, Co Clare

Respondent: Ms Louise Merrigan B.L. instructed by,  
Das Group, Europa House, Harcourt Centre, Harcourt Street, Dublin 2

#### **Appellant's Case**

The appellant worked for the respondent as an electrician from the 2<sup>nd</sup> of August 1999. The respondent's business had quietened down significantly resulting in the appellant being on reduced hours. The appellant served an RP9 notice to claim redundancy form dated the 15<sup>th</sup> of June 2012 stating he was on lay-off from the 17<sup>th</sup> of May 2012 to the 15<sup>th</sup> of June 2012.

The respondent had offered him work on the 13<sup>th</sup> of June in Tralee. This is the furthest distance the appellant had worked from home. He e-mailed the respondent a list of queries regarding the alternative position on the 13<sup>th</sup> of June and handed him the list of queries on the 15<sup>th</sup> of June. The respondent replied to the appellant's queries on the 19<sup>th</sup> of June. The alternative position was not acceptable to the appellant. The respondent offered the appellant €5,000 which he refused.

The appellant took up employment with another company (a quarry) on the 20<sup>th</sup> of June 2012. The quarry is his father's business so he had spoken to the manager on the 15<sup>th</sup> of June 2012 regarding the new job. The appellant had spoken to the respondent previously about this new position but he did not take up employment until the 20<sup>th</sup> of June. The respondent had held the

contract for the electrical work with the quarry for 15 years; he no longer holds the contract.

The appellant did receive the text from the respondent offering him work in Ennis. The work in Ennis was not acceptable as the appellant believed there was only a few days left on the job. The appellant disputes trying to 'drag out' the process in order to have 4 weeks consecutive lay-off in order to claim redundancy. The appellant did not receive the e-mail response from the respondent on the 15<sup>th</sup> of June or the e-mail of the 16<sup>th</sup> of June. The appellant did not respond to the offers of work in Tralee, Ennis or any contact from the respondent as they had 'gone through the RP9 process'.

### **Respondent's Case**

In May 2012 the appellant was put on short-time. In late April or early May the appellant said 'in case you hear it I've been offered a job' in the quarry. The respondent told him to 'put your arms around it the way the economy is going.' The appellant then said his redundancy would be €16,000 but he'd take €8,000 to leave. The respondent informed the appellant that he was not being made redundant he was leaving to take up other employment. The respondent had no intention of making the appellant redundant. The respondent offered the appellant €5,000 as a good will gesture and also to maintain their good relationship and the contract with the appellant's father's business was important.

The respondent always kept the appellant informed of upcoming work. He offered him the work in Tralee which was a big job. The appellant failed to respond to contact by text or phone. He served the RP9 on the 15<sup>th</sup> of June with a list of queries about the Tralee job. The respondent replied informing him of all the details including all the allowances he would receive for travelling. The respondent replied verbally but the appellant requested that all responses to be put in writing. The appellant did not appear for the job in Tralee or the job in Ennis; he did not inform the respondent that he would not be coming back to work.

The respondent has had to refuse work as after the appellant left he did not have enough 'men' for the jobs. When the appellant left his employment to take up the job in the quarry the respondent lost that contract as the appellant was now doing that work.

### **Determination**

A genuine redundancy situation did not exist within the respondent and in any event the Tribunal are satisfied that the appellant had already sourced alternative employment. The appeal under the Redundancy Payments Acts 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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