

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

MN860/2007  
RP655/2007  
WT374/2007

against

2 Employers

Under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr S. Ó Riordain BL

Members: Ms A. Gaule  
Ms. A. Moore

heard this appeal at Dublin on 3rd April 2008

Representation:  
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Appellant(s): Mr. Tom Mallon BL instructed by John P. O'Malley & Company, Solicitors,  
38 Percy Place, Dublin 4

Respondent(s): Mr. Jim Peppard, 42 Ballinteer Drive, Ballinterr, Dublin 16

The decision of the Tribunal was as follows:-

#### **Background**

The appellant's employment terminated on 25 July 2005. The appeal was lodged in the Tribunal on 3<sup>rd</sup> December 2007.

Counsel for the claimant referred to Section 24 of the Redundancy Payments Act, 1967 as follows:

“Notwithstanding any other provision of this Act, an employee shall not be entitled to a lump sum unless before the end of the period of thirty weeks beginning on the date of dismissal or the date of termination of employment

- (a) the payment has been agreed and paid, or

- (b) the employee has made a claim for the payment by notice in writing given to the employer, or
- (c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to the Tribunal under section 39.

On 8 February 2006 the appellant notified his employer Abbeyvard Ltd (trading as Camac Cars) that he intended to claim redundancy. The appellant received a reply on 3 March 2006 from JP to the effect that Camac Cars had ceased trading. JP indicated that the claimant had been offered and had accepted a position as a senior mechanic in Wicklow, where JP had started a new business. The claimant had failed to turn up for work when he was due to in August 2005 and JP, having spoken to the Department of Enterprise Trade and Employment, indicated his view that the claimant was not eligible for redundancy.

### **Appellant's Case**

The appellant told the Tribunal that he was employed as a mechanic with Camac Motors in a premises in Kilmainham. The respondent was the main dealer for Renault and undertook service and repairs. JP was the owner/manager. The appellant was employed as chief mechanic and technical advisor. Approximately ten to twelve employees worked in the premises including four mechanics, body shop workers and salesmen. He was told verbally in 2002 that the respondent was relocating and again in 2004 JP, the owner/manager, told him that he was moving to Wicklow. He was not notified in writing that the respondent was transferring to another location: he was not notified in writing that any transfer of undertaking was taking place and he was not informed that all his rights and entitlements were protected. JP told him that he wanted him to move to Wicklow and that he would give him a petrol allowance and a wage increase. The appellant was informed that JP was now going to undertake work on Nissan cars and JP denied that he would give him a petrol allowance. The appellant undertook special Coltech training. JP told him that he would be better off if he worked with another Renault dealer. In July 2005 the other mechanics were advised to obtain work elsewhere and they left. As far as he was aware employees did not get redundancy. The appellant was the only mechanic left on the premises and he serviced cars.

Shortly before the respondent moved to Wicklow in July 2005 the appellant was informed by JP that he would be in Wicklow on the following Monday. He told JP as he was not getting a petrol allowance or a wage increase it would cost him money to relocate. The appellant reported for work in Kilmainham on Monday 25 July, 2005 and JP was not there. He subsequently received a reference from Camac Cars, signed by JP on 26 July 2005, which outlined the appellant's work history and referred to the commute to Wicklow being too much for him and indicated that CamacMotors were sorry to see the appellant go. He was not given any original contract of employment or written terms explaining how the contract could be terminated or written notice of termination of contract. He was not informed of Transfer of Undertakings Regulations. The appellant did not receive notice. The appellant usually took his holidays in June, July and September but he was not allowed to take holidays in 2005 even though he submitted a request for leave in May and June 2005.

The appellant was employed with another company from 1988 until 1995. In November 2005 the claimant undertook work for Camac Cars. The appellant stated that the diagnostics were different in Renault and Nissan cars but the engines were the same. The appellant had the use of a company car and he drove tester cars. The respondent provided him with a loan of a car until he bought his

own car. The appellant said that he had never heard of Bollorney Ltd.

### **Respondent's Case**

JP told the Tribunal that the appellant was employed for a considerable period of time with the respondent. The appellant was not given notice because he had not turned up for work in Wicklow. The appellant was not given redundancy as the respondent had to employ other mechanics and the appellant had to be replaced. All employees were informed verbally that the respondent was relocating to Wicklow. Everyone assumed that the appellant was going to work in Wicklow. The appellant was told verbally that he was being transferred. The appellant was not offered an alternative job in Wicklow. He had no written attendance records for the appellant and, while he understood that the appellant had taken holidays, he could not prove it. On 25 July 2005 the appellant told him that he was leaving and he requested a reference.

For some time previous to the move to Wicklow payment of employees had been made by Bollorney, Ltd, another company of which JP was a principal. The appellant had been told verbally of the change in terms and conditions but no written notification under the Transfer of Undertakings Regulations had been given. Camac Cars continued trading in Kilmainham for its body shop operations. In 2005 an apprentice panel beater was made redundant. The distance from Kilmainham to Wicklow, where the service end of the business was continued by Bollorney Ltd, was too far for the appellant. The appellant told a manager that he was not going to work in Wicklow and he did not make this clear to JP. He had a good working relationship with the appellant. A P45 form was completed showing his last day of service as 22 July 05. He accepted that the appellant's holiday application, which included a recommendation from the appellant's boss, had been on Camac Motors headed paper; this was because he had no headed paper at the time for Bollorney Ltd.

### **Determination**

Under section 24 of the Redundancy Payments Act 1967 an employee shall not be entitled to a lump sum unless before the end of the period of thirty weeks beginning on the date of dismissal or the date of termination of employment

- (a) the payment has been agreed and paid, or
- (b) the employee has made a claim for the payment by notice in writing given to the employer, or
- (c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been referred to the Tribunal under section 39.

The appellant had made a claim for redundancy payment by notice in writing to his employer within the statutory period and the Tribunal has jurisdiction in the matter.

The facts in relation to the redundancy are simple. A statutory redundancy situation existed by virtue of the employer ceasing to carry on that element of his business in which the appellant was engaged in the place (Kilmainham) where the employee was employed. The employee clearly signalled his reasonable opposition to moving, in the absence of payment of allowances, to Wicklow town and his P 45 was issued showing 22 July 2005 as his last day of service.

Abbeyvard Ltd continued to trade in Kilmainham as Camac Motors for some time after the move of part of the business to Wicklow. At no time was there any statutory notification to the appellant about the transfer of his employment to Bollorney Ltd and no redundancy payment was made by either Abbeyvard Ltd or by Bollorney Ltd

The appellant is entitled to his redundancy under the Redundancy Payments Acts 1967 to 2003 based on the following criteria

Date of birth	9 April 1959
Employment commenced	1 November 1995
Employment ended	25 July 2005
Gross weekly pay	€554.00

The Tribunal awards redundancy to the appellant subject to the appellant being in insurable employment pursuant to the Social Welfare Acts during the relevant period.

As the appellant did not receive notice from his employer he is entitled to four weeks gross pay in the amount of €2,216.00 (€554.00 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The appellant did not receive holiday pay from 1 January until 25 July 2005 and he is therefore entitled to 11.66 days holidays. He is also entitled to pay for public holidays on 1 January, Easter Monday, the first Monday in May and the first Monday in June giving him an entitlement to 15.66 days in total which amounts to €1,735.13 under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

