

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

-Appellant

CASE NO.

RP2807/2010

against

EMPLOYER

-Respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. J. Reid
Mr P. Trehy

heard this appeal at Dublin on 16th June 2011

Representation:

Appellant: Ms. Aoife Farrelly B.L. instructed by Ms Olive Moore, Malone & Martin,
Solicitors, Market Square, Trim, Co Meath

Respondent: Ms. Sophie Cargin B.L. instructed by Thomas Loomes & Company,
Solicitors, First Floor, Unit 19, Donabate Town Centre, Donabate, Co Dublin

The decision of the Tribunal was as follows:

The appellant commenced his employment with the respondent company in 1989. The company operates a factory within which the appellant worked nightshifts for the duration of his employment. One other employee also worked nightshifts. Both parties agreed there was a decrease in the company's business during the last four years of the appellant's employment. Due to this fact, the appellant was reduced to a three-day week from the time of January 2009. This was confirmed to the appellant in letter dated 14th January 2009.

The appellant was also placed on lay-off at certain times during the year. Details of the lay-offs were outlined to the Tribunal. When the appellant was placed on lay-off he would be informed of this by a memo, which was left at the premises for him to read when he presented himself for work.

It was the appellant's evidence that the director of the company informed him in May 2010 that a decision had been made to discontinue the night shift and as a result his employment was terminated. It was the director's evidence that he had asked the appellant if he would consider a

lay-off, to which the appellant had replied, “you may as well let me go” as he wished to claim mortgage protection and social welfare benefits. The appellant refuted this in his evidence stating that he if it had been a lay-off situation he would have been entitled to claim social welfare benefits as he had done during previous lay-offs. The appellant was provided with a letter from the company to submit to social welfare, which stated that unfortunately the company had to let the appellant go. During cross-examination it was put to the director that on previous occasions the company’s correspondence had confirmed to the appellant that the situation was temporary but on this occasion it did not. It was the director’s evidence that the letter was written to facilitate the appellant’s claim for a social welfare payment. The director confirmed the appellant was paid a week’s notice.

The appellant and the director met on one further occasion and the appellant was provided with a P45. The appellant sought a redundancy payment in writing as well as serving an RP9 on the company but he did not receive payment.

The director confirmed that the nightshift work has not resumed since the appellant’s employment terminated but at the time it was the company’s full intention to resume the nightshift once work became available.

Determination:

The Tribunal is satisfied from the evidence adduced that this occasion differed from the other occasions when the appellant was placed on temporary lay-off. The Tribunal is satisfied that the appellant’s employment was terminated on the grounds of redundancy.

The Tribunal finds that that appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	10 th March 1970
Date of Commencement:	15 th December 1989
Period of lay-off in 2007:	20 th August 2007 to 14 th September 2007
Period of lay-off in 2008:	18 th August 2008 to 12 th September 2008
Period of lay-off in 2009:	17 th August 2009 to 11 th September 2009
Further period of lay-off:	21 st December 2009 to 29 th January 2010
Date of Termination:	25 th May 2010
Gross Weekly Pay:	€460.98

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)