

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.
RP2059/2010

Jeremiah McCarthy, 23 St John's Square, Blackpool,
Cork (*the first named appellant*) and

John Sugrue, 7 Pearse Place, Ballyphehane, Cork
(*the second named appellant*)

RP2060/2010

Against

Jim Kavanagh Contractors Limited, Tanamarra, Killumney,
Ovens, Co Cork

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr D. Hegarty
Mr J. Flavin

heard this appeal at Cork on 8th April 2011

Representation:

Appellants : Ms Rose Dorgan, Employment Resource Centre, 13 North Main
Street, Cork

Respondent : Mr Edward Healy, E.K. Healy & Co, Carrigdhoun House,
Poulavone, Ballincollig, Co Cork

The decision of the Tribunal was as follows:-

The respondent runs a small business, providing concrete structures for farmers and specializing in pouring concrete. The first named appellant commenced employment with the employer in May 2000 and the second named appellant commenced in January 2006. The respondent's position was that he put the appellants on temporary lay-off for around six weeks before Christmas 2009, as work could not be done due to adverse weather conditions. The lay-off was not due to a shortage of work. The respondent indicated to both appellants that work would be available on another contract for a number of weeks after Christmas. Work commenced on that contract in January 2010 and both appellants worked on it to its completion. There was then a short break while the respondent was negotiating the price for another contract. During this time the second

named appellant informed him over the telephone that he wanted redundancy. On 23 February 2010 the first named appellant told the respondent's daughter over the telephone to inform her father that he was not going to work for him anymore. The respondent was left without workers and had to employ two others in their place, one of whom worked on a full-time basis. The wife of the proprietor confirmed in her evidence that she had seen both appellants working on site for the respondent in January and February 2011 when she went to deliver their wages to them. She also heard the first named appellant's telephone conversation with her daughter asking her to tell her father, the respondent, that he would not be coming to work anymore.

The position of the *first named appellant* was that the respondent informed him over the telephone on 16 November that he was being laid off on a temporary basis, told him to go on the dole and that he would give him his P45. He had not worked on a contract in January and February 2011 or at any time since his lay-off in November 2009.

The position of the second named appellant was that the respondent personally informed him that he was being laid off temporarily and that he would get his P45. He heard nothing from the employer after that. He had not worked for the respondent at any time in 2010. He did not telephone the respondent and tell him that he was not coming in to work again. He accepted that the respondent had to find replacements for them.

Determination

The Tribunal is satisfied that the lay-off of both appellants in November 2009 was due to adverse weather conditions and not due to a shortage of work. The respondent's evidence that the appellants worked for him for a number of weeks in January and February 2010 is corroborated by a letter from the Revenue Commissioners. Furthermore, the second named appellant accepted that the respondent had to employ other workers to carry out his contracts. For these reasons the Tribunal does not accept that a redundancy situation existed in the business.

Accordingly, the appeal of the first named appellant under the Redundancy Payments Acts, 1967 to 2007 fails.

Similarly, the appeal of the second named appellant under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

