

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

Employee

**CASE NO.**

RP254/2006

UD510/2006

MN323/2006

against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan

Members: Mr. D. Morrison  
Mr M. McGarry

heard this claim at Letterkenny on 15th March 2007

**Representation:**

Claimant(s) : Patricia Murphy, Robert Sweeney, Solicitors, 2, Crerand House, Larkins Lane,  
Letterkenny, Co. Donegal.

Respondent(s) : Mr. Gordon Curley, O'Gorman Cunningham & Co., Solicitors,  
16 Upper Main Street, Letterkenny, Co. Donegal

The determination of the Tribunal was as follows:-

**Claimant' Case**

The claimant gave evidence. He explained that he had never been given any contract of employment, written job description or written grievance procedure but had received papers concerning his completion of his apprenticeship as an electrician.

On January 6<sup>th</sup> 2006 he received a telephone call on his mobile telephone on return from work in Sligo to inform him that he was not need for work the following week and was on temporary lay off. He telephoned the office the following week and was informed there was still no work but there would be soon. He continued to telephone the office over a period of 8 to 9 weeks to be told the same. In March 2006 he contacted his solicitor about the situation. In June 2006 his then solicitor, he changed solicitors before the day of the hearing, wrote to the respondent to request his P45.

During November 2006 and January 2007 four payments from the respondent totalling €2,649.06 were lodged into his bank account. At this time, he was working in England for a different firm and was informed by his partner of the money. He received his P45 dated February 26<sup>th</sup> 2007 from therespondent. He gave evidence of loss.

On cross-examination he explained that he had served his four-year apprenticeship as an electrician with

the respondent plus 2 further months as a fully qualified electrician. He again stated that he had contacted the respondent on numerous occasions to ascertain if there was any work for him, but to betold “another week”. When asked, he said that he had not asked for his P45 as his then solicitor was dealing with it and he was told, “work was coming”. When asked about the money, €2,649.06, lodged tohis account, he said that the money was still in his account to date.

**Respondent’s Case:**

The Managing Director gave evidence. He explained the nature of the business and that there were times of lay off for staff between contracts. In late 2005 / early 2006 work was slack, this continued until November 2006. He explained that the company tried not to leave staff on lay off for a long period of time. If this occurred, staff would be changed over in order for staff on a longer period of lay off would be brought back. He had no concise knowledge of the payments made to the claimant between November 2006 and January 2007 but said it was possibly due to annual leave due or back taxes.

On cross-examination the witness stated that there was no contract of employment, written job description or written grievance procedure given to the claimant, but that he had been given all documents relating to his apprenticeship from FÁS. He explained that staff had been made laid-off in the past and were taken back on. He said the claimant was never dismissed. He personally never received any calls from the claimant concerning his employment. He explained that the monies paid into the claimant’s account during November 2006 and January 2007 could be for annual leave or back tax owed.

The Project Manager gave evidence. He stated that he had tried to contact the claimant on numerous occasions after January 6<sup>th</sup> 2006 but to no avail. He explained that all employees were aware of the down turn in work, as a notice was included in the relevant employees wage packets.

He said that if the claimant rang the respondent he would have spoken to a receptionist. He, the witness, had rung the claimant to return to work, between February and March 2006, but was told that he, the claimant, could not. The witness said that he did not want to force the claimant to return to work.

**Determination :**

Having heard the conflicting evidence adduced by both the claimant and the respondent, the Tribunal finds that the respondent failed in carrying out fair procedures and that the claimant was constructively dismissed. The Tribunal awards the claimant the amount of €5,250 under the Unfair Dismissals Acts, 1967 to 2001.

The claims under the Redundancy Payments Acts, 1967 to 2003 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001 were dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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