

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
MN161/2007
RP109/2007

WT71/2007

against
Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr B. Garvey BL

Members: Mr D. Moore
Mr B. Byrne

heard this appeal at Dublin on 12th July 2007

Representation:

Appellant(s) : In person

Respondent(s) : Ms. Michelle O'Neill BL instructed by:
Frank Ward & Company, Solicitors, Equity House, Upper Ormond Quay, Dublin 7

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant gave evidence. He told the Tribunal that he had commenced employment with the respondent company on November 11th 2004 carrying out groundwork and driving machinery. He sometimes worked on his own depending on the job to be carried out.

In the early summer of 2005 he was laid off by the respondent due to a downturn in work available but he was told that he would be contacted when needed again. When asked, the appellant stated that he had no alternative but to obtain other employment due to his financial pressures. He returned to work with the respondent in May or June of 2005 and remained working for the respondent until February 2007.

On February 15th 2007 he received a letter of termination, due to a shortage of work, enclosed with his week's wages. He received no prior notice. The appellant gave evidence of loss and the annual leave he had taken in 2006.

On cross-examination he told the Tribunal that he had not asked for a rise in wages. He again stated

that he had no prior knowledge in February 2007 that he was to be let go.

Respondent's Case:

The owner of the respondent company gave evidence. During 2004 to 2006 there had been approximately 11 staff. The appellant commenced employment in November 2004 and was a very good worker.

In January 2005 the appellant asked for a rise in wages as he was a skilled worker. When he was told no, he said that he was leaving to work elsewhere. The witness told the Tribunal that he hired two staff, one in January and one in February 2005. In April 2005 the appellant contacted the witness and asked for his job back. He returned in May 2005. There was enough work for all staff until October 2006. The witness told the Tribunal that he informed the appellant and the other staff that they would be working on a week-to-week basis. Business did pick up for a short time only. On February 8th 2007 the appellant and two other staff were informed that they were to be let go the following week (15th).

Under two weeks later the witness acquired more work and contacted the appellant to offer him a job. The appellant agreed but contacted the witness the following day to say that he was not taking the job.

On cross-examination the witness stated that it had been a mistake to date the letter of termination as February 15th 2007. The witness stated that the appellant had taken beyond his complement of annual leave.

The book-keeper gave evidence. She gave evidence of the amount of annual leave the appellant had taken. She told that she had typed the letters of termination and should have put the date as February 8th 2007.

Determination:

Having heard all the evidence adduced the Tribunal finds that the appellant did not have the required service to claim redundancy under the Redundancy Payments Acts, 1967 to 2003. Evidence was also adduced in respect of the appellant taking his full complement, and possibly exceeding, of annual leave. Accordingly, the Tribunal finds that the claims under the Redundancy Payments Acts, 1967 to 2003 and the Organisation of Working Time Act, 1997 fails.

Loss having been established, the Tribunal awards the appellant his statutory entitlement of €687.51 (one week's gross wage), being the sum due for one weeks' notice under the Minimum Notice & Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

