

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
Employee

CASE NO.  
MN510/2006  
RP389/2006

against

Employer

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Fahy

Members: Mr. J. Redmond  
Ms H. Henry

heard this appeal at Galway on 28th August 2007

Representation:

\_\_\_\_\_

Appellant(s): Mr. Aidan Lyons, Regional Organiser, Ucatt, Ballyrush,  
Castlebaldwin, Co. Sligo

Respondent(s): Mr. Paul Cunney, P.O'Connor & Son, Solicitors, Swinford, Co. Mayo.

The decision of the Tribunal was as follows:-

**Claimant's case.**

In sworn evidence, the claimant said that he was a carpenter, who commenced employment with the respondent in 1998. Around the time of his lay-off, in March 2006, he was working in Tuam, Co. Galway. At that point, he was informed of lay-offs, but he claimed that he was told not to seek other alternative employment as the respondent expected to obtain other work. As no work was immediately forthcoming, he said that he asked if he was entitled to redundancy but was informed by a company representative that because it was a small concern the company did not pay redundancy. The claimant also said that he did not hear from the respondent between March and June 2006. He said that he met the attending witness for the respondent in June 2006 at which point he asked if there was work and was told that there was nothing immediately available. That was the last communication between the parties.

The claimant stated that he had been laid off on a previous occasion, in December 2004 despite his belief that the company had obtained work on a development in Galway city in the immediate post Christmas period, and which would carry on into early 2005. On that occasion, he was laid off for approximately six weeks. He denied asking for his P45, confirming that he had not claimed social welfare payments on that occasion and, by way of explanation, stated that he believed the respondent would recall him to work. When put to him that the dates cited on his claim form regarding the period of a temporary lay-off were incorrect, that it actually occurred in December 2004, and he was recalled to work on 10<sup>th</sup> January 2005, the claimant only commented that he had received verbal notice of that lay-off two days prior to it coming into effect.

The claimant sent Form RP9, a claim for redundancy, to the respondent circa May 2006. His purpose in doing so was to obtain redundancy. In its reply to him, he said that the respondent mentioned the possibility of work in Carrick-in-Shannon. He said that he was under the impression he could not return to work for the respondent. He confirmed that he applied for social welfare entitlement when he was let go in March 2006.

In cross-examination, the claimant explained that in July 2001, following an argument with one of the principals of the respondent company, he did not return to work immediately but did so a day or two later. He denied leaving his employment voluntarily, or asking for his P45 in July 2001. In fact, the claimant denied ever having received a P45, a copy of which was opened to the Tribunal and dated 13<sup>th</sup> July 2001. He agreed that he was re-engaged on 3<sup>rd</sup> August 2001. When questioned, the claimant also agreed that he was re-engaged by the respondent on 10<sup>th</sup> January 2005, confirming that another colleague contacted him to advise him about new work on a development in Galway city. He was happy to return to work for the respondent and stated that he did not want to break his contract. He accepted that he had not raised the issue of service with the respondent when he returned to work.

The claimant also stated that while he was on lay-off the respondent had a habit of telling him to stay at home, and that he expected work. However, the respondent failed to do so when he obtained the contract to work in Carrick-on-Shannon. When questioned by the Tribunal, the claimant said that the first he heard of that work was when the respondent wrote to him on 3<sup>rd</sup> May 2006

### **Respondent's case.**

The witness for the respondent said that he commenced business in 1991. He confirmed that business was slack between December 2004 and January 2005. He let a number of employees go but he expected business to pick up. The claimant was not one of the employees immediately affected by the downturn in business but he gave the claimant verbal notice of lay-off circa 3<sup>rd</sup> December 2004. He confirmed that the claimant was re-engaged on 10<sup>th</sup> January 2005 as there was an upturn in work.

With regard to the events of March 2006, the witness said that a job, which had already been deferred on a number of occasions, commenced in Carrick-on-Shannon in June 2006.

When questioned by the Tribunal Chairman how he expected the claimant to support himself between 24<sup>th</sup> March and 3<sup>rd</sup> May 2006, the witness replied that he had not given the claimant his P45. He said that he informed the claimant about the development contract in Carrick-on-Shannon circa December 2005, but couldn't give him a definite start date for the new project. He offered employment to the claimant by letter dated 3<sup>rd</sup> May 2006. However, there was also an amount of preparatory work to be completed before the contract commenced and he said that

the claimant could have undertaken that work in advance of the official start date. He denied that the letter of 3<sup>rd</sup> May 2006 was issued in response to the claimant forwarding a claim for redundancy. He stated that he wanted the claimant to stay on in the company given that he (the claimant) was 'one of his bestmen'. He said that he informed the claimant that he had broken his service when he returned to work in 2001. He had never issued a contract of employment to an employee.

In cross-examination, the witness could not confirm if a formal record existed of the company issuing a P45, which he said had issued to the claimant on 13<sup>th</sup> July 2001. However, when asked, he confirmed that the claimant gave him the same P45 when he was re-engaged by the company in August 2001. He could not confirm if a copy of the P45 had been sent to the relevant social welfare office, or to the Revenue Commissioners. When asked, he agreed that if a lay-off situation eased, he would contact the claimant when work became available. The witness made no comment when it was put to him that this did not occur in March 2006.

In reply to questions from the Tribunal, the witness said that he had never made anyone redundant. With regard to the claimant specifically, he said that only one P45 had issued.

**Determination.**

The Tribunal, having heard the evidence of both the claimant and the respondent, is satisfied that a genuine redundancy situation arose from the 24<sup>th</sup> March 2006. The Tribunal is satisfied that there was a break in the claimant's service on the 13<sup>th</sup> July 2001 when he was issued with a P45. The claimant commenced employment with the respondent under a new contract of employment on the 3<sup>rd</sup> August 2001.

The Tribunal finds that the claimant is entitled to a redundancy payment from 3<sup>rd</sup> August 2001 to 24<sup>th</sup> March 2006 based upon the following criteria:

Date of Birth:	16 <sup>th</sup> October 1959
Date of Commencement:	3 <sup>rd</sup> August 2001
Date of Termination:	24 <sup>th</sup> March 2006
Gross Basis Pay	€785.00

under the Redundancy Payments Acts, 1967-2003.

The Tribunal also finds that the claimant is entitled to €1570.00, being two weeks' gross salary at €785.00 per week under the Minimum Notice and Terms of Employment Acts, 1973-2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

(CHAIRMAN)

