

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
Employee

CASE NO.  
RP449/2006  
MN589/2006

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: Ms. E. Kearney

Members: Mr T. Gill  
Mr. T. Kennelly

heard this appeal at Galway on 30th August 2007

Representation:

\_\_\_\_\_

Appellant(s): Mr. Colm Keaveney, Siptu, Forster Street, Galway

Respondent(s): In person.

The decision of the Tribunal was as follows:-

**Claimant's case.**

The claimant stated that the respondent employed him for four years, delivering beer goods. He said that on the day he was presented with Form RP9 on 22<sup>nd</sup> June 2006 he was shocked as it meant he would be out of work. He confirmed that the letter that accompanied the Form RP9 referred to a temporary lay-off. He spoke with the respondent by telephone on Friday, 27<sup>th</sup> June 2006 who confirmed to him that he had lost an important contract but while he expected another contracts to come on stream, one was not viable, as that contract would pay less money for a significant amount of more work. The claimant was unsure if there was work for him on the following Monday. He said that the during the course of that conversation the respondent thanked him for all his work and that he would forward the claimant's P45 to him. In those circumstances, the claimant said that he started a new job on the following Monday, 3<sup>rd</sup> July 2006, as he believed the respondent no longer employed him. His last conversation with the respondent, he said, took place on 27<sup>th</sup> June 2006.

The claimant denied that he refused other work when the respondent offered it to him. He could not say how his new employer discovered he was out of work, and he maintained that he did not formally apply for a post with that company.

In cross-examination, the claimant denied he had any subsequent contacts or discussions with the respondent about new contracts and hence availability of work anytime after the 27<sup>th</sup> June 2006. He said that it was his understanding that the respondent no longer employed him after 27<sup>th</sup> June 2006 and that issues over his pension, holiday entitlements as well as his P45, remained outstanding at that point.

In reply to question from the Tribunal, the claimant said that he preferred to remain working on the delivery of beer, rather than transfer to delivering cider products, as the latter work was difficult. When asked why the respondent sent on his P45 when he had already served him with Form RP9, in that he then had four further weeks to decide if there was other work for the claimant, he said that as he had obtained other employment he needed his P45 to present to his new employer.

In redirect evidence, the claimant repeated that the respondent told him that there was no further work and again denied that he was offered alternative work on delivering cider products.

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

The respondent said that the claimant had worked for him for four years, working on beer deliveries

The respondent confirmed that he issued temporary lay-off notices, on form RP9, to eight employees as he lost a significant contract. When he found a replacement contract, delivering cider products, he offered that job to three employees, all of whom declined the position. He stated that the only employee available at that point was the claimant, who contacted him by phone about the job, but that he also rang him (the respondent) some seven to eight days later, was abusive and asked for his P45, which issued to him on 30<sup>th</sup> July 2006. The respondent could not say why so many employees refused the new work delivering cider products. He confirmed that the claimant was aware of the new work but also stated that he (the claimant) had left his employment on Friday, 27<sup>th</sup> June 2006 and had already started a new job.

In cross-examination, the respondent confirmed that the claimant's P45 was dated 13<sup>th</sup> July 2006. He maintained that the claimant contacted him about the temporary lay-off, and also maintained that the claimant was abusive to him. However, he also said he was very surprised that the claimant had submitted a claim against the company. He was not aware how the claimant became aware of employment opportunities with another employer but believed that the claimant had heard about them from another person.

In reply to questions from the Tribunal, the respondent said that the beer delivery contract was a significant contract to lose. With regard to his taking over the business from a previous owner, the witness said that he paid the claimant a higher salary as it was of enormous benefit to him, as employer, to have an experienced person like the claimant continue working for him.

A **second** witness for the respondent, employed since 2004 and who prepared wages gave evidence. She confirmed that the claimant's salary was €527.25, which was paid to him by cheque. While she prepared the forms RP9, having sought advice from the Employment Rights unit, she said she had no input into the decision to issue notice of temporary lay-off.

**Determination.**

Based upon the evidence adduced at the hearing, the Tribunal finds that the claimant is not entitled to a redundancy payment under the legislation. Accordingly, the claim under the Redundancy Payments Acts, 1967-2003 fails.

The Tribunal finds that the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

