

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
Employee

CASE NO.
MN646/2006

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Ms. A. Gaule
Mr. F. Barry

heard this claim in Dublin on 17 July 2007

Representation:

Claimants(s) :
In person

Respondent(s) :
Mr. Jim Luby, McStay Luby, Chartered Accountants, Dargan
House, 21-23 Fenian Street, Dublin 2

The decision of the Tribunal was as follows:-

Claimant's Case

The claimant commenced employment with the respondent company on 4 January 1986. The claimant's father had started the business but it got into difficulty in 2004. In early January 2004 the company met its accountants. After a number of meetings it was decided to liquidate the company in March 2004. At that time the claimant was a director with a 33% shareholding. He and his brothers held the shares of the company. The claimant's employment ended on 11 March 2004. He received no minimum notice payment.

In July 2004 the Insolvency Payments Section of the Department of Enterprise, Trade and Employment wrote to Mr. Jim Luby, the liquidator of the respondent, with reference to his application for funds to make a payment to the claimant under the Protection of Employees (Employers' Insolvency) Act, 1984. The application was refused. It had been established by Scope Section of the Department of Social and Family Affairs that the claimant's employment (Class S)

was not insurable for all benefits under Social Welfare Acts at the date of termination of his employment. Section 3 of the Protection of Employees (Employers' Insolvency) Act, 1984, states that the Act "applies to employees employed in employment which is insurable for all benefits under the Social Welfare Acts, 1981 to 1984". Therefore, the claimant was deemed not to qualify for any entitlements under the said Act.

The claimant was not denying or disputing the findings of the Department of Social and Family Affairs. However, he sought a favourable finding from the Tribunal under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, so that he could become a preferential creditor of the company for the recovery of compensation for the lack of a minimum notice payment. He indicated that his claim had come in to the Tribunal "through the liquidator" and that his gross weekly pay had been €452.00. He did not find new employment during the eight weeks after 11 March 2004 i.e. the eight weeks that would have constituted his minimum notice period.

Respondent's Case

The Tribunal received correspondence from the liquidator's office advising that the liquidator would not attend the hearing but asking to be notified of the outcome.

Determination:

The Tribunal is satisfied that the claimant was not aware of the date of the liquidation and, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001, it awards the claimant the sum of €3,616.00 (this amount being equivalent to eight weeks' gross pay at €452.00 per week) based on his service from 4 January 1986 to 11 March 2004.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)