

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

RP609/2006
MN782/2006
WT369/2006

Employee

RP610/2006
MN783/2006
WT370/2006

against

Employer

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Fahy

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Letterkenny on 16 November 2007

Representation:

Appellants:

First named appellant - in person.

Second named appellant - no appearance or representation

Respondent:

Managing Director of the respondent

The determination of the Tribunal was as follows:

The first named appellant (FNA) was employed from February 2003 as a machine operator in a timber harvesting operation. There was no written contract of employment or terms and conditions. FNA worked mainly in Donegal but on occasion was required to travel further afield. From August 2006 FNA was working in Longford. FNA, who was married on 23 September 2006, last worked for the respondent on 20 September 2006. On that day the machine he operated broke down and arrangements were made for the machine to be taken for repair. When FNA returned from his honeymoon, on or about 7 October 2006, he was unable to contact the managing director (MD). He later contacted another director (AD) and AD told him that the machine was to remain in Longford.

FNA's position is that he was told that there was no more work for him; the respondent's position is that, whilst there was no work for FNA in Donegal, there was continuing work for him in Longford. In any event FNA did not return to work for the respondent. There was a dispute between the parties about the amount of holiday pay FNA received in 2006.

Determination:

Having considered the evidence in this case the Tribunal is satisfied that there was continuing work available to FNA in Longford on his return from honeymoon. The Tribunal is further satisfied that FNA chose not to return to work in Longford. For those reasons the Tribunal finds that FNA resigned from his position. In those circumstances the first named appellant's appeals under both the Redundancy Payments Acts, 1967 to 2003 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001 must fail.

Section 25 of the Organisation of Working Time Act, 1997 imposes an obligation on an employer to keep records to show that the provisions of the said Act are being complied with. In the absence of such records the onus proof in regard to compliance with a particular provision of the Act rests with the employer. The respondent in this case was unable to produce records of annual leave taken by FNA. Accordingly the Tribunal awards the first named appellant €1,300-00, being two weeks' pay, under the Organisation of Working Time Act, 1997.

The second named appellant having failed to appear before the Tribunal, the Tribunal being satisfied that he was on notice of the hearing, his appeals under the Redundancy Payments Acts, 1967 to 2003, the Minimum Notice and Terms of Employment Acts, 1973 to 2001 and the Organisation Of Working Time Act, 1997 all fail for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)