

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

MN694/2007

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. B. Garvey B.L.

Members: Mr. W. Power
Mr. P. Trehy

heard this claim at Dublin on 2 January 2008

Representation:

Claimant:

Mr. Dermot J. Hickey, Haughton McCarroll Solicitors,
2 Church Street, Wicklow

Respondent:

Company Solicitor

The decision of the Tribunal was as follows: -

The claimant was employed as a temporary general worker from 22 February 1999. The claimant applied for an apprenticeship with the respondent and was accepted in a cohort of 95 that commenced their training in September 2004. The alternative for the claimant would have been to take a redundancy package as the respondent had negotiated an agreement whereby they would no longer employ temporary workers. As a safeguard for mature age apprentices such as the claimant, a safety net was put in place whereby apprentices who could not "hack the pace" would still be able to take a redundancy package after they had begun the apprenticeship. The claimant's position was that he was told that this safety net would remain in place throughout the entirety of his apprenticeship. The respondent's position was that the safety net only applied to the first two years of the apprenticeship.

The apprenticeship consists of seven phases with phases 1, 3, 5 & 7 being on the job and phases 2, 4 & 6 being college based. An apprentice is allowed three attempts to pass the exams at the end of each college-based phase of the apprenticeship. The claimant passed phase 2 of the apprenticeship, at the third attempt, in February 2006. On September 19 2006 the apprentice co-ordinator had a review meeting with the claimant where the possible difficulties he might face with his phase 4

exams were brought up. There is a dispute between the parties as to whether the time limit on the redundancy package was brought up on this day. It is common case that about a week later the claimant expressed an interest in the package and that the apprentice co-ordinator obtained details of the package on offer for the claimant. On 29 September 2006 the apprentice co-ordinator brought it to the attention of the claimant that this was the last day on which the redundancy package would be available to him. The claimant accepted the package, which included a statutory redundancy payment, and left the employment that day. There was no payment made to the claimant in lieu of notice. The respondent's position being that, as the claimant had resigned, he was not entitled to a payment in lieu of notice. The claimant's position was that he had been pressured into accepting the package; he felt that "a gun had been held to his head".

Determination

The Tribunal does not accept the respondent's contention that the claimant resigned. The reason for the termination of the employment was redundancy, albeit on a voluntary basis. In those circumstances, loss having been established, the Tribunal is satisfied that the claimant is entitled to receive payment for his period of notice. The Tribunal awards €1,641-40, being four weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)