

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
Employee

CASE NO.  
MN824/2007  
RP595/2007

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 Flanagan BL

Members: Mr F Cunneen  
Mr J Maher

heard this appeal at Dublin on 12<sup>th</sup> March 2008

Representation:

Appellant(s): In person

Respondent(s): In person

#### **The decision of the Tribunal was as follows:**

The respondent consents to an award of redundancy in favour of the appellant. The Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Acts 1967 to 2003 based on the following agreed criteria in respect of the appellant's employment:

Date of Birth:	16 <sup>th</sup> July 1962
Date of Commencement of Employment:	10 <sup>th</sup> November 2000
Date of Termination:	1 <sup>st</sup> June 2007
Gross Weekly Pay:	€900.00

The gross weekly remuneration exceeds the statutory weekly ceiling and therefore the award shall be calculated at the maximum rate of €600.00 per week.

The Tribunal awards redundancy to the appellant subject to the appellant being in insurable

employment pursuant to the Social Welfare Acts.

The Tribunal is satisfied that the appellant was employed at all material times by the limited liability company and not the principal in the firm and amends the T1A accordingly.

The appellant also claimed minimum notice. Section 5(1) of the Minimum Notice and Terms of Employment Acts, 1973 to 2001 provides as follows:

5. (1) The provisions of the Second Schedule to this Act shall have effect in relation to the liability of an employer during the period of notice required by this Act to be given—
  - (a) by an employer to terminate the contract of employment of an employee who has been in his continuous service for thirteen weeks or more, and
  - (b) by an employee who has been in such continuous service to terminate his contract of employment with that employer.
- (2) This section shall not apply in any case where an employee gives notice to terminate his contract of employment in response to a notice of lay-off or short-time given by his employer.
- (3) Any provision in a contract which purports to exclude or limit the obligation imposed on an employer by this section shall be void.

The Second Schedule of the Minimum Notice and Terms of Employment Acts, 1973 to 2001 provides, *inter alia*, that:

1. Subject to the provisions of this Schedule, an employee shall, during the period of notice, be paid by his employer in accordance with the terms of his contract of employment and shall have the same rights to sick pay or holidays with pay as he would have if notice of termination of his contract of employment had not been given.

The appellant having given notice to terminate his contract of employment in response to a notice of lay-off or short-time given by his employer is therefore not entitled to minimum notice in the circumstances of this redundancy situation and therefore the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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