

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee

RP202/2007

against

MN336/2007

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó'Catháin

Members: Mr. M. Forde
Mr. D. McEvoy

heard this appeal at Cork on 5 March 2008

Representation:

Appellant:

In Person

Respondent:

Mr. Conor O'Connell, Construction Industry Federation,
Construction House, 4 Eastgate Avenue, Little Island, Cork

The determination of the Tribunal was as follows:

The appellant, who was employed as a mason, had worked for the respondent since mid 2000. At the start of the Christmas holiday in 2006 the managing director (MD) of the respondent told the appellant that he would be laid off during the part week at the beginning of 2007. On Sunday 6 January 2007 MD sent the claimant a text message in which he extended the period of lay off. Shortly after this extension of the lay off the appellant received his P45 from the respondent. The respondent's position is that the appellant requested it to enable the appellant to claim social welfare benefit. The appellant's position is that he received the P45 as his employment had been terminated. The appellant commenced employment with a new employer on 16 January 2007. The appellant kept in touch with MD and, when MD was in a position to offer more work to the appellant at the end of February 2007, the appellant sought a redundancy payment from the respondent.

Determination:

Whilst there was a conflict of evidence regarding the issuing of the P45, the Tribunal is not satisfied that the respondent intended to terminate the appellant's employment when laying the appellant off at the beginning of 2007. The appellant started a new job on 16 January 2007. This was some two weeks after the lay off commenced. In these circumstances where the appellant was neither dismissed nor laid off for four consecutive weeks the appeal under the Redundancy Payments Acts, 1967 to 2003 must fail. Rather the appellant, by his actions, resigned to take up a position with an alternative employer. The Tribunal having found that the appellant resigned, the claim under the under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 must also fail

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)