

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

MN800/2007

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Fahy B.L.

Members: Mr. D. Morrison
Mr. P. Clarke

heard this claim at Sligo on 1 July 2008

Representation:

Claimant:

Mr. Aidan Lyons, Regional Organiser, UCATT,
Ballyrush, Castlebaldwin, Co. Sligo

Respondent:

Ms. Anne Hickey, Solicitor,
Wine Street, Sligo

The decision of the Tribunal was as follows: -

The claimant was employed as a mature age apprentice from 9 August 2004. The employment was uneventful until the summer of 2007 when the directors of the respondent informed the workforce that the future prospects for the respondent were not good. It had been agreed for the claimant to take two weeks' holidays after 24 July 2007. On the afternoon of 24 July 2007 one of the directors (D1) of the respondent intended to visit the claimant on site to tell the claimant that his employment was coming to an end and not to return after his holiday. When D1 arrived on site the claimant was not there and later that evening D1 had a telephone conversation with the claimant. The respondent's position is that during this conversation D1 gave the claimant notice that he was not to return to work after the holiday. The claimant's position is that D1 told him that work was tightening up and the claimant was to contact the second director (D2) on his return from holiday in order to ascertain where he was to resume work.

On 9 August the claimant unsuccessfully attempted to contact both directors and eventually contacted a colleague (AC) to find out where he should report for work on 10 August 2007. The claimant returned to work on 10 August 2007. In the early afternoon he was telephoned by D2 and

told “ I’ll pay you for the day and we’ll leave it at that.” The claimant received pay for the two weeks’ annual leave. The respondent’s position was that this holiday pay constituted the claimant’s notice pay. He received a P45 dated 2 August 2007 in the week following 10 August 2007.

Determination

The Tribunal is not satisfied that, during the telephone conversation on the evening of 24 July 2007, D1 gave the claimant notice of termination of his employment. The doubt around this matter would have been resolved had the claimant been given written notice of termination. The Tribunal finds that the termination was effected during the telephone conversation between D2 and the claimant on 10 August 2007. Even if the Tribunal is wrong about this and was to accept that the claimant was given notice of termination by D1 on 24 July 2007 then the evidence shows that the only monies received by the claimant on the payslips for the next two weeks were his holiday pay. Holiday pay cannot be credited as payment in lieu of notice; it is a separate statutory entitlement. The Tribunal awards €1,321-08, being two 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)