

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

RP154/2008
UD194/2008

MN185/2008

WT88/2008

Against

Employer

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal

(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly Bl

Members: Mr. J. Reid
Mr. G. Whyte

heard this claim at Dublin on 23rd May 2008

Representation:

Claimant: In person

Respondent: John Mc Donough, Mc Donough & Breen Solicitors, Distillery House,
Distillery Lane, Dundalk, Co. Louth

The determination of the Tribunal was as follows:-

Respondent's Case:

One of directors gave evidence on behalf of the Respondent. The company was formed in 1996; it had a lease on a premises that they operated as a gaming arcade for about ten years. The claimant was employed as a cashier attendant, whose duties included opening and closing the premises, and

mainly working on his own. The director said he normally called in on a daily basis. The claimant had commenced in June 1996. Shortly before June 2007 the gaming arcade was closed and the claimant was informed verbally of his redundancy. The premises remains closed to date. The director accepted that the claimant was not served with appropriate notice and that the claimant was entitled to redundancy from 12th June 1996.

Under cross examination the claimant put it to the Director that he had commenced employment with another of his companies "Odds and Ends" in 1990 and was hired by another Director. The Director acknowledged the existence of company but that there were no records for this company as it ceased trading in 1993/1994. Therefore had no record of the claimant working with them before June 1996 and had no recollection of the claimant working for them during this period. P60s for the claimant were available from 1996 to termination with the exception of 1997. He said he was associated with another company -still trading- that started business about 1991, but he had checked the records of this company and found no evidence of the claimant working there.

Claimant's Case:

The claimant said that he commenced work with this employer in 1990 and was in continuous employment since then. He said that he was recruited by another director and he named the premises that he had worked in. He had no contract of employment. He had received no formal notice of Redundancy. He suspected that he was entitled to holiday pay for 15 days that included 2 public holidays. The only notice he received was verbal, on 19 June 2007. He could not understand why he was not offered alternative employment. He said that he was appalled at the way the case was progressing, and the way he was treated both by the Rights Commissioner Service and the EAT.

Under cross-examination he acknowledged that his principal place of employment with the Respondent was Talbot Street. He had no proof with him that he was working previously with the Respondent prior to 1996, however he had received payslips and would have same going back to 1992. It was pointed out to him that it was his responsibility to have prepared his case and to have the relevant documentation with him. He confirmed that the figures in the T1A form were correct.

Determination:

The Tribunal, having considered all the evidence, finds that the claimant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria:

Date of Birth:	14 th March 1956
Date of Commencement:	12 th June 1996
Date of Termination:	27 th June 2007
Gross Pay:	€339.00

There was no evidence provided by the claimant that he was employed by the Respondent prior to 1996.

The Tribunal also awards the claimant €2034.00 (being the equivalent of six weeks pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

In addition, he is awarded €949.20 (being the equivalent of 14 days pay) under the Organisation of Working Time Act, 1997.

As claims for unfair dismissal and redundancy are mutually exclusive, the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)