

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
MN565/2008
RP526/2008
WT265/2008

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr M. Noone
Mr A. Butler

heard this appeal at Dublin on 15th October 2008

Representation:

Appellant(s) : Mr. Noel Buckley, Unit 2, Whitehaven, Calverstown, Kilcullen, Co.Kildare.

Respondent(s) : Mr.Francis Mulligan, Solicitor,113 Clonsheagh Road, Dublin 9

The decision of the Tribunal was as follows:-

Respondent's Case

The respondent MC gave direct evidence that the appellant was employed as a bricklayer for over ten years. The appellant was a good worker. Work concluded on a construction site in Dublin for a week or two on the 29 April 2008. He informed the appellant of this and told him that he would not have any work for him until work recommenced on a site in Dublin. He did not pay the appellant for this period.

The appellant contacted him while there was no work happening and requested his P45 and a reference. The appellant enquired from him about signing on the dole. His sister who was also his bookkeeper gave the appellant his P45 and also supplied him with two references. He paid holiday

pay to the appellant that was owed to him on the 6 May 2008. On the 16 May 2008 he contacted the appellant and told him that work was recommencing on the Dublin site on the 19 May 2008 and he offered him work. The appellant declined the offer and said he was getting out of building work.

In response to questioning he agreed that he laid off another employee at the same time as the appellant and did not replace them.

Appellant's Case

The appellant told the Tribunal that on the 29 April 2008 MC told him that he had no more work for him and that he was being let go immediately. When he enquired as to his entitlements he was told to contact the respondents bookkeeper who would sort out everything. He was given three days holiday pay and his P45. He asked for a reference and was supplied with two references. He telephoned MC on the 13 or 14 May 2008 informing him that he would be seeking redundancy. MC told him that he had no difficulty with this but later he received a letter dated 28 May 2008 from MC informing him that he was not entitled to redundancy. Some time later the appellant received a call from MC saying that he may have a nixer for him working in a garage in Blessington but never had any follow up on that. MC never offered him work on a construction site in Dublin after he was laid off. The appellant understood that work on the construction site in Dublin was finished and all bricklayers working on the previous site he had worked on were members of a union. He was not a member of a union.

Determination

The Tribunal has carefully considered the evidence adduced. The Tribunal finds that the employer intended that there would be a temporary lay-off as his business was between jobs. However the employer failed to communicate this to his employee with sufficient clarity and the employee understood that he was being made redundant with little or no prospect of work becoming available. The employer by his actions terminated this employment. He made out a P45, paid up all entitlements due and most importantly wrote a reference to facilitate the employee in his search for further employment.

It is noted that the employee was never replaced which adds weight to the idea that this was a genuine redundancy situation. In the circumstances the Tribunal finds that the employee was made redundant and awards the appellant his statutory entitlement under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria:-

Date of Birth:	6 th February 1980
Date of Commencement:	20 th June 1997
Date of Termination:	29 th April 2008
Gross Weekly Pay:	€900.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal further awards a sum of €3600.00 being the equivalent of four weeks wages under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 as the appellant did not receive minimum notice.

The appellants claim under the Organisation of Working Time Act, 1997 fails as no evidence was

given in relation to this claim.

Please note that there is a weekly ceiling of €600.00 on all awards made from the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

