

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

MN531/2008  
RP487/2008

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: Ms. M. Levey BL

Members: Ms J. Winters  
Mr G. Lamon

heard this appeal at Dublin on 1st October 2008

Representation:

\_\_\_\_\_

Appellant(s): Mr John Mathews, Dundalk Resource Centre, 30 Clanbrassil  
Street, Dundalk, Co Louth

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

The decision of the Tribunal was as follows:-

#### **Respondent's Case**

The respondent MC told the Tribunal that the appellant was employed for ten years as a bricklayer. A job concluded on 25 April 2008 and it was a temporary lay off. He had no work for two weeks and was waiting to hear about a job and he told the appellant that he would have work for him. The appellant told him that he was thinking of leaving the building industry and would pass on it. The appellant requested his P45, as he was not earning money. MC told him he would give him work in two weeks time.

In cross-examination asked if he spoke to the appellant he replied the appellant telephoned him. Asked why the P45 was included in the appellant's wages he replied that the appellant requested his P45. The appellant asked him for a reference to enable him to get the dole. Asked if he told the appellant that he could give him work occasionally he replied he could not recall. He did not terminate the appellant's employment, he had a temporary lay off for two weeks. He did not offer the appellant his P45. Asked why pay the appellant holiday pay if laying off an employee he

replied he did not look after wages. A job was coming on stream at the end of April in Blessington. Asked why the project in Dublin ceased he replied the job was not ready. The appellant was not placed on temporary lay off.

LS on behalf of the respondent told the Tribunal that she was responsible for bookkeeping and wages. If the appellant did not receive his wages he would come to the shop where she worked. MC informed her that the appellant and his colleague requested their P45's. as they needed the dole. She gave the appellant his P45 and a week later he returned and asked for a letter. The appellant's colleague telephoned her to establish if he was due holiday pay. She contacted the accountant who informed her that holiday pay was due to both the appellant and his colleague and she then told the appellant that holiday pay was due to him. The appellant's employment was not terminated. She gave the appellant his holiday pay as she wanted to help out and no employees have been taken on.

### **Appellant's Case**

The appellant told the Tribunal that on 29 April 2008 at 1.30p.m. MC told him that he had no work for him. On Friday he collected his wages and his P45 was included. He obtained advice from Citizens Information who told him that he was entitled to redundancy. He never wanted his P45, he had a mortgage and could not afford to be out of work. MC did not speak to him on Friday 2 May 2008. Weeks later he received a text from MC that he may have a mixer and have occasional work for him and long term he did not know what was going to happen. He received a text from MC on 5 May 2008 which indicated that the garage which MC was working on would be ready the end of the week and long term that he did not know. The appellant asked MC if work was coming on stream. A week and a half later the appellant registered with FAS. He sent a text to MC and requested a reference and he did not hear further from MC. He could not be sure if MC had employed anyone else.

In cross examination asked if he knew the project in Dublin was going to resume he replied that MC told him that there was no work for the moment. He stated that he and his colleague asked MC what was going to happen. He never received a telephone call from MC to say that he had work for him. He did not think that he was entitled to holiday pay and he received holiday pay. He had been friends with MC for ten year, they had a very good relationship and he did not want to discontinue working with MC. He obtained alternative employment six weeks later. He did not receive minimum notice. Asked if he requested his P45 he replied that he received a message from LS that a P45 was included in his wages.

### **Determination**

Having considered all the evidence the Tribunal is of the view that a genuine redundancy situation existed. The respondent could not offer the appellant work on a full time basis. The payslip dated 2 May 2008 indicated that the appellant was paid holiday pay, his P45 was also included with the payslip, it is not the practice to give holiday pay in circumstances where if one is to accept the evidence of the employer, work was to recommence within two weeks when he had told the appellant on letting him go on 29 April 2008 that he could have work for him in two weeks. MC told the Tribunal that the appellant has not been replaced. A text sent to the appellant on 5 May 2008 confirms in our view that permanent work was not available. The employer was unable to guarantee such work.

The Tribunal allows the appeal for redundancy under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria: -

Appellant's date of birth	20 February 1979
Date employment began	01 July 1998
Date employment ended	2 May 2008
Gross weekly pay	€820.06

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

The appellant did not receive minimum notice and he is therefore entitled to four weeks gross pay in the amount of €3,280.24 (€820.06 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Please note that there is a weekly ceiling of €600 on all awards made from the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

