

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

CASE NO.

MN478/2008

against

Employer

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. O'Leary B.L.

Members: Mr. F. Cunneen
Ms. C. Byrne

heard this claim at Dublin on 29th October 2008

Representation:

Claimants(s): In person

Respondent(s): Mr. Michael Manley, Michael A. Manley & Co., Registered Auditors &
Accountants, 8 Prince of Wales Terrace, Bray, Co Wicklow

The decision of the Tribunal was as follows:-

Claimant's case:

The claimant's last payment from the respondent was at week ending 10 February 2008. On Monday 11 February, he received a telephone call from the respondent terminating his employment. He received no further payments since then.

Respondent's case:

The respondent informing the claimant during the summer and before Christmas that work was coming to an end. He considered that this ongoing verbal information to the claimant sufficed as notice. However, the claimant's employment continued as the respondent got more work and he continued to employ and pay the claimant in the hope that work would pick-up. He confirmed that the claimant was paid for all of the hours that he had worked.

The current financial position of the respondent was also highlighted to the Tribunal.

Replying to the Tribunal, the respondent could not confirm when he gave the claimant an unqualified statement of notice that his employment would terminate in February 2008.

It was also confirmed to the Tribunal that the respondent is not in liquidation.

Determination:

An inability to pay notice is not a defence to a claim for pay in lieu of notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. A respondent's inability to pay is not a relevant matter for the Tribunal when making a determination as to whether an employee is entitled to notice or payment in lieu of notice.

The Tribunal is satisfied on the basis of the evidence adduced that the claimant's employment was terminated without notice. No unqualified statement, either verbal or written, was given to the claimant to confirm to him that his employment would end in February 2008, or at any time. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 succeeds. Due to the claimant's length of service with the respondent, the Tribunal awards compensation of €2880.00, which is equivalent to six week's gross 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)