

## EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:**

Employee

**CASE NO.**

MN757/2008

RP696/2008

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 A. Gaule  
Ms. A. Moore

heard this appeal at Dublin on 25th November 2008

**Representation:**

Appellant(s) : XXXX

Respondent(s) : XXXX

The decision of the Tribunal was as follows:-

The claimant gave his evidence with the aid of an interpreter who also represented him.

**Respondent's Case:**

The respondent's owner gave evidence. The appellant had approached him looking for a full-time position with another company (hereafter known as company A) the witness owned in 2001. The appellant worked on refurbishments and new builds.

The witness had another company, the named respondent company (hereafter known as company B), in operation at the same time. In July 2004 company A was in financial difficulty. Fifteen staff were let go and the remaining five, including the appellant, were offered, in writing, positions with company B. Staff who were let go were not paid redundancy. The witness explained that company B completed work started by company A for free as a goodwill gesture. The appellant was paid two weeks minimum notice in July 2008 and was issued his P45.

An employee of the respondent gave evidence. She explained that she had been employed by the company A and had transferred over to company B. She had worked in administration and had issued the staff's P45's. When asked, she stated that instead of handing the P45's from company A to the staff moving to company B, she just submitted them to revenue on their behalf. When asked, she said that

the appellant may not have known his first P45 had been submitted to revenue on his behalf.

**Appellant's Case:**

The claimant gave evidence. He commenced employment with the respondent's first witness in 2000. He stated that he transferred from company A to company B, carried out the same type of work and believed there was a transfer of undertakings. When he changed over to company B he was still working on the same site, doing the same work.

He had not received a P45 from company A and just assumed the company had changed its' name. He stated that if he had known there was a break in employment and he was entitled to 4 years redundancy, he would have applied for it in 2004.

**Determination:**

Based on the evidence adduced by the respondent's witnesses it appears there had been a break in service in 2004 and the appellant had commenced new employment. The appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2003 based on the following information:

Date of Birth:	14 May 1950
Date of Commencement:	15 July 2004
Date of Termination:	28 July 2008
Gross weekly pay:	€ 705.00

It should be noted that a statutory weekly ceiling of €600.00 applies to payments from the Social Insurance Fund.

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

As the appellant was paid two weeks minimum notice his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 is dismissed.

Sealed with the Seal of the  
Employment Appeals Tribunal

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