

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
RP100/2008
MN107/2008

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: Mrs. M. Quinlan

Members: Mr P. Pierson
Mr J. Le Cumbre

heard this appeal at Tullamore on 29th August 2008

Representation:

Appellant(s) : XXXX

Respondent(s) : Hoey & Denning, Solicitors, High Street, Tullamore, Co. Offaly

The decision of the Tribunal was as follows:-

It was agreed at the outset that the appellant's average gross weekly remuneration was € 513.29.

Respondent's Case:

A supervisor of the site the appellant worked on gave evidence on behalf of the respondent. He explained that the respondent was involved in the development of apartments in the Portarlinton region. He met with the appellant and another employee to discuss being paid per unit completed. A set price was agreed for each unit they completed and it was also agreed that the respondent would deduct their PRSI and PAYE out of the set price.

When asked, he said that independent contractors came and went "as they pleased" and had no input into how they did their work, as long as it was completed. They were not paid for annual leave taken. Employees of the respondent worked from 8am to 5 pm, clocked in and out and were disciplined if they just "came and went". He explained that the appellant had not been paid on a weekly basis and had not complained. When asked why a slip of paper stating, "*under no circumstances must employees leave the site to lodge cheques as the reason you*

are paid on a Thursday is to allow time for a lodgement on a Friday” was received by the appellant, he replied that the secretary must have given it to him by mistake.

The site foreman gave evidence on behalf of the respondent. He reiterated what the respondent’s first witness had stated in evidence.

Claimant’s Case:

The claimant gave evidence. He stated that he commenced employment with the respondent in 2002. From 2002 to 2005 he was an employee of the respondent and was subject to the same disciplinary procedures as the other employees. In 2005 the respondent’s first witness asked if he and a colleague could be paid per unit completed. The claimant worked five days over ten and the respondent deducted his PRSI and PAYE. He had no written contract of employment. He did not pay the employers’ portion of the PRSI contribution. The appellant gave evidence of loss.

When asked, he stated that he had carried out private work when not working for the respondent.

Determination:

The respondent adduced no sufficient evidence in this case to establish that the appellant was not an employee of the respondent company. The Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2003, in accordance with the following criteria:

Date of Birth:	6 th March 1949
Employment Commenced:	3 rd October 2002
Date of Termination:	16 th February 2007
Gross Weekly Pay:	€ 513.29

This award is made subject to the appellant fulfilling the relevant social welfare requirements in relation to PRSI contributions.

Loss having been established the Tribunal is satisfied that his employment ended without notice and he is therefore entitled to € 1026.58, which is equivalent to two 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)