

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee - **Claimant**

UD536/2008

RP435/2008

MN485/2008

against

2 Employers

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2003 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. S. Mahon

Members: Mr. D. Morrison
Mr. P. Clarke

heard this appeal at Sligo on 17 September 2008
and 13 February 2009

Representation:

Claimant:

Mr. Barry Creed on the first day, Mr. Tom Martin
on the second day, both of McDermott Creed & Martyn Solicitors,
Constitutional Buildings, Stephen Street, Sligo

Respondent:

Ms. Elaine Coghill, Anne Hickey Solicitors,
Wine Street, Sligo

The determination of the Tribunal was as follows:

Determination:

The first named respondent employed the claimant from 6 August 1990. From 1 September 2005 the two respondents employed the claimant in a partnership arrangement. The employment was uneventful until 28 April 2007 when the claimant was taken ill and hospitalised. The claimant's last day of paid employment with the respondents was 27 April 2007. The claimant and the respondents

kept in touch during the claimant's recovery period over the next few months but the claimant's employment status was not discussed. In October and November 2007 the respondents made their four other employees redundant due to a lack of work. Again the claimant's employment status was not discussed. The respondents' position is that it was at no stage their intention to declare the claimant redundant but that there would always be work for him once he recovered. The claimant was never told that his job was safe.

In February 2008 it became clear to the claimant that it was likely that he would never be able to return to his former work with the respondents. The claimant's position is that he put it to the first named respondent that "my future looks bleak". The respondents' position is that the claimant merely requested his P45 as he was on permanent disability, intending to enrol on a FAS course and was resigning from their employment. The claimant was given a P45 in February 2008 that the claimant rejected as it showed his last day of employment as 27 April 2007.

The Tribunal is not satisfied that it was the respondents' intention to retain the claimant in their employment after declaring all their other employees redundant in October 2007. In their initial response to the claims their response was that the claimant had ceased employment on 27 April 2007. This cannot be the case as no such communication took place between the parties. In the circumstances the Tribunal finds that the claimant was dismissed by reason of redundancy on 27 October 2007. Accordingly it follows that the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail. The Tribunal is satisfied that the claimant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria

Date of Birth	13 May 1955
Employment commenced	6 August 1990
Employment ended	27 October 2007
Gross weekly pay	€625-00

It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week. This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The claimant not being available for work at the relevant times, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)