

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

- claimant

UD706/2008

RP598/2008

MN643/2008

against

Employer

- respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey

Members: Mr J. Horan
Ms K. Garvey

heard this claim at Dublin on 5th December 2008

Representation:

Claimant: Mr. Blazej Nowak, Emigrant Advice Centre, 19 Talbot Street, Dublin 1

Respondent: Mr Thomas Taylor, 22 Cypress Pk, Dublin 6W

The determination of the Tribunal was as follows:

The claims under the Unfair Dismissals Acts, 1977 to 2001, and Minimum Notice and Terms of Employment Acts, 1973 to 2001, were withdrawn during the hearing.

Claimant's case:

The claimant gave evidence that when he came back from holidays on 28 March 2008 he asked the company if there was any work available. They gave him a letter to facilitate his claim from Social Welfare, but he got no RP9. On 1 July 2008, he sent a letter to the company with an RP9. If they had work to offer they could have issued counter notice, but they didn't do this. He denied that he received a phone call from the company on 2 July 2008. He said that the letter sent to him by the company on 9 July 2008 doesn't mention an RP9. He said that he got the P45 on 2 August 2008. In April 2008 he asked for his P45 but the company gave him a letter for Social Welfare instead. He

never asked for his P45 after this.

Respondent's case:

The Contracts Manager (BK) gave evidence that the company was a recruitment agency for the Construction industry. He said that they phoned the claimant and left messages, but he didn't come back to them. They rang him the day they received the RP9 (2 July 2008). The company endeavoured to contact him, but without success. He requested his P45 on 19 May 2008, and this was sent to him, and it meant that he had left his employment. He admitted that the company did not respond to the RP9, but just offered him more work. They had work for him, but received no response from him. The claimant had requested his P45, so he understood by this that the claimant was leaving the job. It was normal practice for the company to issue letters like the one given to the claimant on 15 April 2008, so that he could claim social welfare. He told the claimant that this letter was all he needed, not his P45. He said that he was shocked at receiving the RP9 from the claimant as he had assumed he had gone.

Determination:

In part C of the RP9 form in regard to a lay-off situation, it states that counter notice must be given in writing by the employer to the employee within seven days of service of the employee's notice. The respondent should have issued this counter notice if they wanted to keep the claimant in the job, but they failed to do so.

Therefore the Tribunal finds that he is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2003 based on the following details:

Date of Birth	28 July 1963
Date employment commenced	21 April 2005
Date employment ended	8 July 2008
Gross weekly salary	€900.00

(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.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

