# EMPLOYMENT APPEALS TRIBUNAL

**APPEAL(S) OF:** **CASE NO.**
Employee RP366/2008

against

Employer

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Petty

Members: Mr. J. Redmond
Dr. A. Clune

heard this appeal at Galway on 12th December 2008

**Representation:**

Appellant(s): Mr. Pat Keane, Regional Secretary, TEEU, Forster Court, Galway

Respondent(s): Mr. Breffni O'Neill, Construction Industry Federation, Construction House, Canal Road, Dublin 6

The decision of the Tribunal was as follows:-

**Opening arguments:**

The contention of the respondent's representative was that the appellant had been paid his full statutory redundancy entitlement, a cheque for same having been made payable to him and sent to his union representative on 20 November 2008.

The claimant's representative acknowledged that they received a cheque for redundancy but there was a shortfall in the amount of €4290.00, which equated to notice for a period of five weeks.

**Claimant's case:**

The appellant worked for the respondent for ten years and one hundred and eleven days. On 15 February 2008, he received one week's notice of the termination of his employment and hisemployment ended on 22 February 2008.

On 27 March 2008, an RP77 form was sent to the respondent but no reply was received to same. On 29 April 2008, an appeal under the Redundancy Payments Acts, 1967 to 2003 was lodged to the Employment Appeals Tribunal.

During the week of 20 November 2008, a cheque was received in the office of his union in relation to the appellant's redundancy. The redundancy payment was capped at the statutory amount of €600.00 per week. The appellant confirmed that he received this redundancy cheque. However, he was entitled to six week's notice of the termination of his employment but only received one week's notice. The short fall in the cheque equated to five week's notice.

An application was made to the Tribunal to amend these proceedings to include a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

In cross-examination, the appellant said that on receipt of the one week's notice of the termination of his employment, he had understood from the respondent that there was no possibility of future work and that the lay off was going to be long term. The respondent had no work at that time. The appellant had contacted the respondent to enquire about forthcoming work and because he had been given no hope of same, he had sent his RP77 form to them. The appellant confirmed that he had received his redundancy payment.

The appellant explained that his presence before the Tribunal was because of his understanding that he had been entitled to six week's notice of the termination of his employment. When put to him, he confirmed had not been aware that when a person makes a claim for redundancy after being on temporary lay off for a period of four weeks, the right to notice is waived.

Replying to the Tribunal, the appellant confirmed that he had been employed by the respondent as a qualified construction electrician. He had worked in England for about ten years prior to commencing his employment with the respondent. At the time, there were twelve to fourteen employees working for the respondent.

The appellant had never been on lay off before and had completed the T1-A form (*Notice of Appeal*) himself.

**Respondent's case:**

The respondent did not consent to the proceedings being amended to include a claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

The respondent gave notice to the appellant on 15 February 2008. The work on site had halted due to the weather conditions and the condition of the building in which they were working. The respondent had gone personally to six or eight employees and told them that as work was grinding to a halt, there was going to be temporary lay offs but he did not know how long it would be before they would be back at work.

It was a temporary lay off situation and as far as the respondent was concerned, it was never a redundancy situation. When work resumed, all of the employees had returned except one who had secured alternative employment. In the case of the appellant, he had submitted the RP77 form prior to the resumption of work.

In cross-examination, the respondent confirmed that five or six employees resumed employment after 20 February 2008. Three or four of these employees had less service than the appellant. There are now ten or eleven people employed by the respondent. One person did not return after the lay off period and others left to secure alternative employment in England.

The respondent confirmed that following receipt of the notification of the hearing of this case, he had

received correspondence from the appellant's union showing where the calculations for redundancy were incorrect.

Replying to the Tribunal, the respondent confirmed that they had returned to work after about five weeks. He had contacted the employees to return to work but had not contacted the appellant because the RP77 form had been received. This action by the appellant was disloyal after having been in his employment for so many years.

The respondent agreed that, in essence, the appellant had been replaced. This replacement had not been within the five weeks of lay off but had occurred within a couple of weeks after the resumption of the job. Redundancy had been paid to the appellant because the respondent thought it was obligatory to do so.

The respondent had worked successfully with the appellant and the appellant had never been laid off before. He had not told any of the employees that the lay off was likely to be a long term lay off.

**Determination:**

The uncontested evidence adduced to the Tribunal established that the respondent gave notice of lay-off to the appellant on the 15 February 2008 (albeit it is disputed by the appellant that this was stated to be a temporary lay-off) and on the 27 March 2008, an RP77 form was sent by the appellant to the respondent to which there was no reply. Furthermore, on the 29 April 2008, the appellant lodged an appeal under the Redundancy Payments Act 1967 to 2003 to the Employment Appeals Tribunal.

On the 20 November 2008, a cheque for redundancy was sent to the appellant's union (the appellant confirmed receipt of same), which sum was capped at the statutory amount of €600.00 per week.

The Tribunal finds the lay-off of the appellant, as well as a number of other employees, was genuine and in accepting the redundancy cheque, the appellant disentitled himself to either work out a notice period or be paid in lieu. Accordingly, the Tribunal determines the appellant's application to amend the proceedings to include a claim under the Minimum Notice and Terms of Employment Act 1973 to 2001 is refused and his appeal under the Redundancy Payments Act 1967 to 2003 is dismissed as he has been paid his full entitlement to same.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)