

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

- appellant

MN830/2008

RP772/2008

against

Employer

- respondent

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 S. Behan

Members: Mr. M. Forde
Mr D. McEvoy

heard this appeal at Mallow on 23rd March 2009

Representation:

Appellant :

Mr Thomas J. Carroll, Timothy J. Hegarty & Son, Solicitors,
58 South Mall, Cork.

Respondent :

XXXX

The decision of the Tribunal was as follows:-

Appellant's case:

The appellant giving evidence told the Tribunal that he is twenty-nine years of age and had been working for the respondent as stonemason for close on nine years. There were no complaints about his work. On 27th March 2008 he heard rumours about work drying up. He went to the yard in Charleville that day and the managing director called him and his colleague to the office and he spoke of the downturn in business. He stated that work was scarce and looked like the appellant would be getting his P.45. The appellant asked what was the story in relation to redundancy and he was told "suppose, Yes". He received a cheque for €1,000 which was to cover his holiday pay and

was then told “if things improved in a few months -- but at the moment not much happening”.

The appellant did not walk out of his job and there were no phone calls inviting him back to work. There was just one other employee and he was also let go.

In cross-examination witness said that when he met the managing director in Charleville the cheques were already written out for him and his colleague. They were told that the “well had gone dry” and that he (MD) hated using the word P.45. He had not intention of leaving.

In answer to questions from Tribunal members he stated that about six weeks later, in or around 13th May 2008 he received a solicitors letter stating that there was work available but he received not further contact from the respondent. Prior to Christmas 2008 he obtained some alternative work.

The Tribunal also heard evidence from the colleague of the appellant. He also worked as a stone mason and had been in the employment of the respondent for five years. He was working with the appellant on the day in question and he was also asked to the office. The managing director stated that he supposed we heard of the rumours that the “well had gone dry”. There was then a mention of redundancy by the appellant and the managing director had cheques written out for the both he and the appellant. Neither he nor the appellant walked out of their jobs.

In cross-examination witness confirmed that he was not contacted by the respondent in relation to returning to work. The cheques were written out in advance and they were not asked to go away and come back to collect them.

Respondent’s case:

The managing director in his evidence to the Tribunal stated that the job the appellant and his colleague were working on was only half finished. He asked them to come to the office and told them that things were getting tough. They were often asked to do work themselves and he felt they had to pull together to keep things going. He never told the appellant or his colleague he was letting them go. The appellant said if that’s the way things are “we’re out of here”. The appellant mentioned redundancy and he told him yes if he was entitled to it however witness subsequently sought advice where he was told that if the appellant walked off the job then he could not pay him redundancy.

In cross-examination witness said that the appellant was a good stone mason. When the appellant came into his office he, the appellant was of the opinion he was being let go. If people were making rumours he may have felt he’d get out while he could. He would never use the word P.45. He was very sorry to see the way things were going and he would love if the appellant and his colleague were still with him. The appellant never walked off a job previous to this. Since October 2008 the banks have been trying to put the company into Liquidation. The company has not charges registered against it. He did not have the cheques written out in advance of the meeting the appellant and his colleague.

In answer to questions from Tribunal members witness stated that the wages are paid on a Thursday. When the appellant and his colleague came back in he had to tear up the wages cheques and write out other cheques to cover the wages and outstanding holiday pay due. The reason for sending the solicitors letter was that the appellant would not answer his phone. He could not remember sending a P.45 but the appellant confirmed receiving one about a month after being let go. Even though the appellant and his colleague walked out and left him in the lurch the employees

always got their entitlements.

Determination:

The Tribunal is satisfied that the appellant's employment ended by reason of redundancy and without notice. He is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2003, based on the following:

Date of birth	16 th August 1979
Date employment commenced	25 th June 1999
Date employment ended	28 th March 2008
Gross weekly wage	€650

Please note that a statutory weekly wage ceiling of €600 applies to all 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

The appellant is also entitled to payment of €2,600 which is the equivalent of four weeks wages under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

