

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

Employee

- *claimant*

CASE NO.

RP463/2008

UD1048/2008

MN513/2008

WT240/2008

against

Employer

- *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. Mc Grath BL

Members: Mr. B. Kealy
Mr A. Butler

heard this claim at Dublin on 16th September 2008
and 25th February 2009

Representation:

Claimant:

Mr. Marcin Szulc, Maguire McClafferty, Solicitors, 8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent:

No appearance by or on behalf of the respondent

The determination of the Tribunal was as follows:-

Determination

The claimant was employed for in excess of two years and went out sick on the 7th of December 2007 with a back injury. Whilst on unpaid sick leave, the claimant received a P45 from his employer. No notice was given of the intention to terminate the employment and the parties did not communicate thereafter.

The Tribunal has extended the time for bringing an Unfair Dismissals claim in the circumstances where no redundancy situation existed. The onus rests with the respondent to demonstrate that the dismissal was fair and reasonable in all the circumstances.

The Tribunal is satisfied that the respondent company continues to operate as a legal entity and that all appropriate efforts to communicate with the company have been made. The claimant confirmed in evidence that he cannot take up gainful employment arising out of his disability and therefore cannot substantiate a claim for financial loss.

The Tribunal finds that it is just and equitable in all the circumstances that it would make an award of compensation of four weeks remuneration totalling €1200.00 under Unfair Dismissals Acts, 1977 to 2007. Claims under the Unfair Dismissals Acts 1977 to 2007 and the Redundancy Payment Acts 1967 to 2003 being mutually exclusive the claim under the redundancy acts must fail.

In addition the Tribunal directs that the appropriate payment in lieu of notice should also be made to the sum of €600.00 being two weeks' pay under the Minimum Notice and Terms of Employment Acts 1973 to 2001. As the claimant gave evidence that he did not received any holiday pay while in employment with the respondent, holiday pay is to be paid in the amount of €2460.00 pursuant to the Organisation of Working Time Act 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

