

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee
-Appellant
against

RP945/2008
MN1020/2008

Employer **-Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S.C.

Members: Mr. J. Browne
Ms. K. Garvey

heard this appeal at Wexford on 6 May 2009

Representation:

Appellant:

XXXX

Respondent:

Ms. Muireann McHenry, Peninsula Business Services (Ireland) Limited,
Unit 3 Ground Floor, Block S, East Point Business Park, Dublin 3

The determination of the Tribunal was as follows:

The appellant was employed from 16 June 2002 as a general operative. From 5 November 2003 the appellant was registered with FAS as an apprentice. This apprenticeship was successfully completed on 20 June 2008. On 27 June 2008 the claimant was given two week's notice of dismissal, due to lack of suitable work being available, and was dismissed on 11 July 2008. The respondent relied on Section 7 (4) of the Redundancy Payments Acts, 1967 to 2007 which provides

“Notwithstanding any other provision of this Act, where an employee who has been serving a period of apprenticeship training with an employer under an apprenticeship agreement is dismissed within one month after the end of that period, that employee shall not, by reason of that dismissal, be entitled to redundancy payment.”

The respondent's position was that at the time of the dismissal they contended that the appellant's apprenticeship was distinct from his earlier employment as a general operative such that he had less than five years service and was only entitled to two week's notice. At the hearing of this appeal it was conceded that the appellant was entitled to receive four week's notice of

dismissal. Nevertheless the respondent's position was that as Section 2 (1) of the Redundancy Payments Acts, 1967 to 2007 defines date of dismissal as "(a) where his contract of employment is terminated by notice given by his employer, the date on which that notice expires, (b) where his contract of employment is terminated without notice, whether by the employer or by the employee, the date on which the termination takes effect"

The appellant's position was that the Tribunal should consider paragraph 4A of Schedule 3 of the Redundancy Payments Acts, 1967 to 2007 which states

"Notwithstanding anything in paragraph 4 (and anything in clause (b) of the definition of "date of dismissal" in section (2), the period of notice due to an employee under section 4 (2) (a) of the Minimum Notice and Terms of Employment Act, 1973, but not given by the employer, shall, where the Tribunal so orders, be allowed as continuous service for redundancy purposes where, but for the failure of the employer to comply with the provisions of that Act, the employee would have qualified for redundancy payment."

The respondent's position was that this paragraph was not intended to deal with a situation pertaining to the dismissal of an employee at the end of a period of apprenticeship.

Determination:

The Tribunal is satisfied that paragraph 4A can be applied to the situation that exists in the instant case. Accordingly the Tribunal is satisfied that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2003 based on the following criteria

Date of Birth	30 September 1983
Employment commenced	16 June 2002
Employment ended	11 July 2008
Gross weekly pay	€480-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Loss having been established the Tribunal further awards €960-00, being two weeks' pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2003.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)