

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

Employee  
- *appellant*

### CASE NO.

MN1150/2008  
RP1065/2008  
WT509/2008

against

Employer  
- *respondent*

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr R. Murphy  
Mr P. Mc Aleer

heard this appeal at Monaghan on 8th April 2009

Representation:  
\_\_\_\_\_

Appellant: Philip Mc Cabe, Monaghan Citizen Information Centre, 23 North Road, Monaghan

Respondent: In person

The decision of the Tribunal was as follows:-

### **Appellant's case**

The appellant gave evidence that he had worked with the respondent since 1997. On the 25<sup>th</sup> April 2008 he received a letter of lay off from his employer informing him he would be laid off on the 9<sup>th</sup> May 2008. He actually worked up to the 16<sup>th</sup> May 2008. He went to the respondents house to get paid and he only paid him his lie in week, the employer also gave him a back dated letter 3<sup>rd</sup> April 2008 issuing him with six weeks notice of the impending lay off. The employer explained to him that this was to cover himself for the appellant's minimum notice. The following week he received his other weeks pay.

At the end of June the respondent rang offering him a week's work in Cork. He was annoyed with him, as he had received a letter informing him that his pension had not been paid for three months. He raised this with the employer and an argument ensued, then the respondent hung up on him. On

the 11<sup>th</sup> July 2008 he sent the respondent an RP77 form.

The respondent issue a letter to the appellant on the 8<sup>th</sup> August 2008 advising him “once again that I have a full time job for you”. Also, confirming that he had contacted the appellant on the 23<sup>rd</sup> June advising him that he had work commencing on the 30<sup>th</sup> June. In evidence the appellant said that the work in Cork had only lasted one week and he believed that there was work starting in Ashbourne on the 18<sup>th</sup> August 2008.

In replying to questions from the Tribunal, before the lay off the appellant was working two to three days for some weeks. He did not believe that the respondent had a full time job for him and the respondent had laid the lads off after the work in Ashbourne ceased. He had received three days holiday pay at Easter.

### **Respondent’s case**

He operates as a sole trader and the appellant worked as a general operative for him. Work had started to slow down and he had tried to keep all his employees working. He had to give the appellant a three-day working week but the appellant had said that this was no good for him. He eventually laid them off on the 16<sup>th</sup> May 2008. He rang the appellant and told him that he had two weeks work in Cork, and to follow on from that work in Ashbourne. He informed the appellant that he had at least work till Christmas. When he received the RP77 from the appellant he was not aware of his obligations in respect of this form.

Under cross-examination he confirmed that he had laid off about nine or ten employees in May 2008.

In replying to questions from the Tribunal he established that the work in Cork had lasted two weeks, the work in Ashbourne finished in the second week of October 2008. However he had work up to January/February 2008. The appellant had been his main man, and he had to hire in self-employed people to cover for him.

### **Determination**

Having considered the evidence adduced the Tribunal notes that the appellant served an RP77 form on the respondent on the 11<sup>th</sup> July 2008. An employer is obliged to respond in writing within four weeks offering the employee in excess of continuous employment for thirteen weeks. This offer did not specify that the employment offered was for the period specified in the Act. The Tribunal is satisfied that a redundancy situation existed within the company. Accordingly the Tribunal finds that the appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date of Birth	4 <sup>th</sup> December 1975
Employment commenced	May 1997
Employment ended	16 <sup>th</sup> May 2008
Gross weekly pay	€648.34

Please note that a statutory weekly 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 Tribunal awards the appellant €518.67 being four days holiday pay under the Organisation of Working Time Act 1997. As the appellants redundancy succeeds he is therefore not entitled to minimum notice, so his claim under Minimum Notice and Terms of Employment Acts 1973 – 2005 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)