

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

Employee
- **claimant**

RP928/2008
MN997/2008
UD1085/2008

- **claimant** RP929/2008
MN998/2008
UD1086/2008

against

Employer - **respondent**

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr M. Kennedy
Ms. C. Byrne

heard this claim at Dublin on 27th January 2009

Representation:

Claimants :

Mr. Blazej Nowak, Emigrant Advice Centre, 19 Talbot Street,
Dublin 1

Respondent :

Mr Peter McBreen, Padraic Monaghan, Liquidator, KPMG Restructuring,
Russell Court, St Stephen's Green, Dublin 2

The determination of the Tribunal was as follows:-

At the outset the claims under the Unfair Dismissals Acts, 1977 to 2007 were withdrawn in respect of both employees.

The respondent company went into Liquidation on 26th September 2008

Both employees worked on the same building site

The first named employee in his evidence stated that he commenced his employment on 3rd April 2006. He worked as a roofer and was paid €650 per week. A payslip was shown to the Tribunal to verify his rate of pay. He did not receive notice of termination of employment. While the Liquidator stated that the company records show that his employment ended on 14th August 2008, the employer signed a letter dated 2nd September 2008, stating this date as being 28th August 2008. He went to the Social Welfare office on 29th August 2008. Witness stated that his colleague, the second named employee worked with him on 28th August 2008.

In cross-examination witness stated that he was given his P.45 at the beginning of September 2008. While he noticed that people were leaving he and his colleague were told there was work for them and there was nothing to worry about.

The second named employee in his evidence stated that he commenced his employment in or around 10th August 2006. His first cheque was dated 11th August 2006. For the first four or five months he was paid by cheque and after that he was paid by direct debit. His gross weekly wage was €791 and this was verified by a payslip which was shown to the Tribunal. He did not receive notice of termination of employment. He received his P.45 in mid September 2008 and attempted to contact the employer, but without success.

The Liquidator stated that his employment, i.e, second named employee, commenced with the respondent on 28th August 2006 and his employment ended on 14th August 2008. The Liquidator also stated that the company records showed another P.45 with a date of termination of 9th November 2007. He was paid to 14th /15th August 2008 and he had no record of either employee working or being paid beyond that date.

The representative stated that a faxed copy of P.45 shows a date of termination of 15th August 2008. A further P.45 showed a date of termination as 18th September 2008. He also stated that his employment ended on 29th August 2008 and a decision is awaited from the Rights Commissioner's office under the Payment of Wages Act 1991, for unpaid wages for the period 15th August – 28/29th August 2008.

Determination:

The second named employee gave evidence of his first salary cheque being dated 11th August 2006, therefore the Tribunal takes this as being his commencement date, (at the latest). The Liquidator conceded that he worked to 14th /15th August 2008 however it is possible that his date of termination may have been 28th August 2008, but no evidence was presented to the Tribunal in this regard.

The Tribunal is satisfied that the employment of both employees ended by reason of redundancy and without notice. Both employees are entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

First named employee:

Date of Birth	13 th May 1984
Date employment commenced	03 rd April 2006
Date employment ended	28 th August 2008
Gross weekly wage	€645.39

Second named employee

Date of Birth	15 th May 1980
Date employment commenced	11 th August 2006
Date employment ended	15 th / 28 th August 2008
Gross weekly wage	€791.70

Both employees are also due payments in respect of minimum notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. In the case of the first named employee he is entitled to the sum of €1,290.78 which is the equivalent of two weeks wages and the second name employee is entitled to the sum of €1,583.40 this also being the equivalent to two week wages under the said Acts.

Please note that a statutory weekly ceiling of €600 applies to all payments from the Social Insurance Fund

These awards are made subject to the claimant's having been in insurable employment under the Social Welfare Acts during the relevant period.

Both claims under the Unfair Dismissals Acts, 1977 to 2007 were withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

