

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee

MN29/2009

RP21/2009

against

Employer

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms O. Brennan

Members: Mr F. Moloney  
Mr C. Ryan

heard this appeal at Dublin on 17th July 2009

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

Appellant :

Ms. Aoife Marrinan, Richard Grogan & Associates,  
Solicitors, 16 & 17 College Green, Dublin 2

Respondent :

Mr. Breffni O'Neill, CIF, Construction House, Canal Road,  
Dublin 6

The decision of the Tribunal was as follows:-

At the outset the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn by the appellant's legal representative.

#### **Appellant's case:**

The appellant's employment ceased on 10<sup>th</sup> July 2008 and he was paid two weeks notice. He received his P.45 at the end of July 2008 and was told there was no work for him in the respondent company. At an interview for another job he heard of redundancy and he rang the respondent to

enquire about payment for redundancy and was told that enquiries would be made with the accountant. He thinks he spoke with the manager. He did not hear from the respondent after that and he then took legal advice. At the beginning of May/June 2009 he went home to Lithuania and he could provide proof to show he was in Ireland until then.

In cross-examination witness stated that he was surprised when he was laid off. He had an interview for another job around September/ October 2008. He did not recall the respondent saying there would be work in the future he just asked for his redundancy. The appellant made this call from a Social Welfare office in Dublin City centre. He received a Social Welfare payment each week and he could verify this if necessary.

In answer to questions from Tribunal members the respondent representative stated that no contact was made by the respondent as there was no work available for the appellant. He received his P.45 as he needed it for Social Welfare purposes.

### **Respondent's case:**

The appellant was employed as a semi-skilled operator decommissioning petrol stations. He was a valued employee. All the employees were told that work was drying up. From late 2007 to 2008 they were trying to keep him on as work could come up at any moment. Negotiations were going on between the petrol stations and the tenant and the respondent believed that work could pick up at any moment. There was no contact with the appellant as there was no work. The appellant was in the office a couple of times and he also made contact by telephone. The appellant then rang in late October 2008 enquiring about redundancy and witness told him that he could not make him redundant as there would be other work coming up. The appellant told witness that he had moved home to Lithuania and would not be coming back to Ireland. At the end of January 2009 he took two employees back and if the appellant had been available he would also have been taken back. The appellant was good at the paper work and the safety side of the job. Redundancy was paid to another employee, on request, around November / December 2008 but there was no work available for this employee.

In answer to questions from Tribunal members witness stated one job started on the week prior to this hearing. He did not contact the appellant in January 2009 as he had told him that his girlfriend had moved back to Lithuania and he was also going back. The two workers who were taken back in January 2009 were semi-skilled workers.

The contract supervisor in his evidence told the Tribunal that he spoke to the employees and told them there was no work. The appellant was aware that work was drying up and others were laid off before the appellant.

At the conclusion of the hearing the appellant's legal representative showed a respondent complimentary slip dated 10<sup>th</sup> July 2008 and signed by L, which stated that the appellant was notrequired to work his notice. There was no mention of temporary lay off. The respondent agreedthat there was a lady called LM who worked in the accounts department but she would not haveknown the appellant was being placed on temporary lay off.

**Determination:**

Upon hearing the evidence of both sides the Tribunal is satisfied that the appellant's employment was ended by reason of redundancy and he is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth	07 <sup>th</sup> May 1981
Date employment commenced	02 <sup>nd</sup> August 2005
Date employment ended	10 <sup>th</sup> July 2008
Gross weekly salary	€600

Please note that this award is being made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

