

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.
RP105/2009
MN112/2009

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 N. O'Carroll-Kelly BL

Members: Mr. J. Reid
Mr F. Barry

heard this appeal at Dublin on 30th June 2009

Representation:

Appellant(s) : Mr. James Coughlan, Irish National Painters & Decorators Trade Group,
Liberty Hall, Dublin 1

Respondent(s) : In Person

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant commenced employment in 1999 as a painter. He had no contract of employment and only received a small number of payslips during his employment. On March 7th 2008 he was informed that he was on temporary lay-off as there was no work. He did not receive an RP9 form. On April 8th 2008 he received a call from the respondent offering him weekend work painting thirteen offices. He replied that he could not as he had a prior engagement and did not think he had to work weekends. He asked could he could return to work the following Monday but the respondent did not reply.

On cross-examination he said he had not been informed the respondent had got a 4-year contract with an electricity company and was not working for another employer at the time. When asked why he had not explained his family commitments in more detail or even contact the respondent at a later stage, he replied that he was very "nervous" and did not know what to do. When asked he

said that he had had a very good working relationship with the respondent and had worked overtime during weekends in the past. He gave evidence of loss.

Respondent's Case:

The owner gave evidence. He informed the staff in March 2008 that they were going on temporary lay-off due to the lack of work but that he would contact them as soon as there was work. On Tuesday April 7th he secured a 4-year contract with an electricity company and rang his staff to inform them the following day. He contacted the appellant, offered him the job but he refused. All the staff returned to work for him except the appellant and one other. He told the Tribunal that the appellant's union was fully aware of the contract.

On cross-examination he stated that he had offered the appellant his job back on numerous occasions and at the hearing again offered him his position back with the company as his position was still available.

Determination:

Having heard the evidence adduced by both parties the Tribunal finds that a redundancy situation did not occur in this case as the appellant's job was still available. Accordingly the claim under the Redundancy Payments Acts, 1967 to 2007 fails. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)