

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Employee

CASE NO.

RP1060/2008

MN1145/2008

against

Employer

Employer

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: Mr. D. Mac Carthy S C

Members: Mr F. Cunneen
Mr P. Trehy

heard this appeal at Mullingar on 4th March 2009
and 2nd July 2009

Representation:

Appellant(s) : In Person

Respondent(s) : In Person at first hearing. No appearance at second hearing.

The decision of the Tribunal was as follows:-

Determination

The appellant worked for the second and third named respondents between 8 February 2001 and 8 August 2008. He said that he continued to work, driving the same truck from the same quarry under the first named respondent from the 5 May 2008.

The first named respondent agreed that it employed the appellant from 5 May 2008 to 30 August 2008 when the business ceased but said that they did not take over any business activity or business in respect of the other respondents.

At the first hearing, a director of the first named respondent told the Tribunal that they did not purchase the business and did not own any trucks, although it did keep up the lease payments and the insurance on the truck which the appellant drove.

The matter was adjourned to give the first named respondent an opportunity to substantiate the case that there was no transfer. At the second hearing there was no appearance by or on behalf of any of the respondents, and the Tribunal finds as a matter of law that the “activity” under section 2 of the Redundancy Payments Act 1967 was transferred to the first named respondent within the meaning of section 20 as amended by section 12 of the Redundancy Payments Act 1971 and schedule 3, rule 6 as amended of the Redundancy Payments Act 1967.

The Tribunal finds that the appellant is entitled to a redundancy payment under the Redundancy Payments Acts 1967 to 2007 from the first named respondent based on the following information:

Date of Birth:	23 July 1968
Date of commencement of employment:	8 February 2001
Date of termination of employment:	8 August 2008
Gross weekly pay:	€614.24

The Tribunal also awards the appellant the sum of €2456.96 being the equivalent of four weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

The Tribunal discharges the second and third named respondents.

The Tribunal issued a subpoena to an accountant who acted for all respondents in order to clarify the nature of the transaction. The said accountant failed to answer the summons and the Tribunal will address that issue.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)