

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.

EMPLOYEE

MN196/2009

RP189/2009

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 R. Murphy  
Mr P. McAleer

heard this appeal at Monaghan on 21st July 2009

Representation:

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Appellant(s) : Mr. Alan Wilkie, Wilkie & Flanagan, Solicitors, Main  
Street, Castleblayney, Co Monaghan

Respondent(s) : Ms. Kara Turner BL instructed by Coyle Kennedy McCormack, Solicitors,  
Thomas Street, Castleblayney, Co. Monaghan

The decision of the Tribunal was as follows:-

#### **Respondent's Case**

Witness for the respondent hereinafter known as EA gave direct sworn evidence that he is a director of the respondent company. In December 2007 the company had three employees, a carpenter and two plasterers. A machine driver employed by the company was made redundant on 1 December 2007 as there was no more work available for him and he was paid his redundancy entitlement.

On the 20 December 2007 EA was approached by the appellant who suggested that he take a few

weeks off unpaid. Work was slack at that time and the suggestion suited the company. EA knew that the work situation would improve in February 2008 as he had work priced and the appellant was due to resume in February 2008. He gave the appellant his P45 in December 2007 as he thought he needed it to claim Social Welfare benefit. He did not view this as signifying the termination of the appellant's employment. He did not promise to pay him his redundancy because he was not let go permanently.

On the 14 February 2008 he telephoned the appellant and offered him work but the appellant told him that he was not interested in returning to work. This position was outlined in writing by the company to the appellant by way of letter of the 28 February 2008. He was then contacted by the appellant on three or four occasions by telephone and in person after the 28 February 2008. On each occasion the appellant was seeking his redundancy payment but never did so in writing.

Under cross examination the witness confirmed that the machine driver who was made redundant on 1 December 2007 was paid his redundancy entitlement in August 2008. The machine driver engaged a trade union official in seeking his payment and this caused the delay of eight months. He agreed that he had completed a form sent to the Department of Social Community and Family Affairs, which indicated the reason for the appellant's termination of employment as compulsory redundancy. He did so in the belief that it would be of benefit to the appellant concerning a claim for mortgage relief. He agreed that the appellant contacted him personally on five occasions seeking his redundancy payment. On each occasion he informed him that he was not in a position to pay him as he, (the appellant) was not entitled to payment. A temporary lay off situation existed and this suited both parties.

In reply to questions from the Tribunal he confirmed that his letter to the appellant dated 28 February 2008 outlining the company's position made no reference to the fact that the appellant had approached him in December 2007, suggesting that he take unpaid time off.

### **Appellant's Case**

The appellant gave direct sworn evidence that he was made redundant on 20 December 2007. He spoke with EA on week prior to that and was informed that there was no more work available. He received his P45 on 20 December 2007 and never approached the respondent company suggesting that he take unpaid time off. There was no suggestion made by the respondent that he was being temporarily laid off and no mention was made of work being priced. The respondent made no reference to him of returning to work in February 2008.

In February 2008 EA contacted him offering him work. He had another job lined up at this stage and he declined the respondent's offer. He contacted EA personally on five occasions seeking his redundancy payment and was told that he (EA) was unable to pay as he had houses remaining unsold. On 4 February 2008 he confirmed that asked EA to complete forms in relation to his mortgage and EA did so.

Under cross examination he confirmed that he sought advice from the citizens advice centre in August 2008 regarding his situation. He confirmed that he was receiving unemployment benefit at that time and never wrote to the respondent seeking a redundancy payment.

In reply to questions from the Tribunal he confirmed that the last occasion that he spoke with the respondent was December 2008. On that occasion the respondent told him that he hoped to have the redundancy payment sorted out before Christmas.

## Determination

The Tribunal is satisfied that the appellant made regular and genuine efforts to secure his redundancy from the respondent. On each and every occasion he was promised by the respondent that as soon as he had the funds he would “look after him”. The Tribunal is satisfied that on the last occasion in December 2008 that the respondent did inform the appellant that he would pay him his redundancy before Christmas and we are satisfied that the appellant took him at his word. The appellant has shown reasonable cause and the Tribunal are satisfied that it has jurisdiction to hear the case.

The Tribunal are satisfied having heard the evidence that a genuine redundancy situation existed and awards the appellant a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of Birth:	24 December 1963
Date of commencement of employment:	20 January 1997
Date of termination of employment:	20 December 2007
Gross weekly pay:	€500.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

The Tribunal are also satisfied that the appellant did not receive any notice under the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Tribunal awards the appellant the sum of €3000.00 being the equivalent of six weeks pay under the said Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

