

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

Employee

- appellant

CASE NO.

UD1446/2008 RP1296/2008

MN1396/2008 WT595/2008

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. D. Hegarty
Mr. K. O'Connor

heard these claims in Cork on 7 July 2009

Representation:

Claimant(s) :

In person

Respondent(s) :

No attendance or representation

The determination of the Tribunal was as follows:-

The appellant wrote to the Tribunal stating that he had been employed (as a blocklayer) by the respondent from February 2002 to 28 September 2008 and making claims for unfair dismissal, redundancy, minimum notice and unpaid holidays. (He subsequently informed the Tribunal that he had started his employment on 18 August 2003.)

The respondent wrote to the Tribunal stating that he was a self-employed blocklayer who had employed the appellant as a first-year apprentice in August 2003 and had paid apprentice wages until the appellant qualified in August 2007. The appellant was then paid one hundred euro net per day but there were many weeks when a day or two would be lost to rain. In August 2008 “work got

scarce” and the appellant “signed on” from 18 August to 25 September. When the appellant returned the respondent informed him that the respondent “only had part-time work three or four days a week” and that, “if the work wasn’t there”, the respondent “would have to let him go until work picked up”. The appellant “agreed”. That was his notice. On the appellant’s release the appellant demanded a P45 which the respondent immediately gave him so that he could seek other employment. The respondent wrote to the Tribunal that he was waiting for his accountant to “do” the appellant’s “P50” and that, if the appellant was “entitled to anything”, the respondent was “in no position to pay”. The respondent wrote that “the only reason” he let the appellant go was that the respondent “simply had no work”.

Regarding holidays, the respondent wrote that he had paid the appellant everything to which he was entitled “allowing him to take his holidays as he wished” and not deducting from the appellant’s holiday money when the appellant was off work with sports injuries.

At the Tribunal hearing, the appellant stated that he had not got redundancy and was claiming it. He stated that he was claiming unfair dismissal as well but admitted that he was “not too sure”. He stated that he had got no notice but “was told on the day” and that he was also claiming two weeks’ holidays.

Giving evidence under oath, the appellant said that his employment had ended between 20 and 30 October 2008. He had been “down to three days per week”. (He added that there had only been one or two days’ work in some weeks.)

The appellant stated he had worked two days in the October bank holiday weekend when the respondent said that he would get no bank holiday because there was not enough work. A local citizens’ information centre told the appellant that he was entitled to the bank holiday but the respondent said that he would not pay and that, if the appellant was “going to be like that” he could finish at the end of the day. They worked for the rest of that day. The appellant rang the respondent during the following week and the respondent said that he would pay for the bank holiday. The respondent did pay what he owed to the appellant.

The appellant received his “P45 and P60”. He asked about holidays but the respondent said that he would get no more. The appellant told the Tribunal that he had wanted two weeks’ holidays. He stated that he had worked three days per week “or four in a good week”. He got nothing for days that were rained off. Asked if he had any payslips, he said that he was always paid cash.

Correcting his initial statement as to when his employment had ended, the appellant told the Tribunal that his employment had not ended on 28 September 2008 but rather on 28 October 2008 because he had finished up when he had asked for the bank holiday.

Determination:

The claim lodged under the Unfair Dismissals Acts, 1977 to 2007, is dismissed given that the appellant’s employment was terminated by reason of redundancy.

Under the Minimum Notice and Terms of Employment, 1973 to 2005, the Tribunal awards the

appellant the sum of €1902.56 (this amount being equivalent to four weeks' gross pay at €475.64 per week which was the assessment made by the Tribunal as to the appellant's gross weekly remuneration).

Under the Organisation of Working Time Act, 1997, the Tribunal awards the appellant the sum of €190.26 (this amount being equivalent to two days' gross pay at €475.64 per week given that the appellant was not working a full week every week in 2008).

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that the appellant is entitled to a redundancy lump sum based on the following details:

Date of Birth:	05 October 1985
Date of Commencement:	18 August 2003
Date of Termination:	28 October 2008
Gross Weekly Pay:	€475.64

None: social insurance fund payments are dependent on the employee having been in insurable employment under the Social Welfare Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)