

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE - appellant

CASE NO.  
RP1443/2008

against  
EMPLOYER - respondent

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J Fahy BL

Members: Mr T Gill  
Mr P Clarke

heard this appeal at Loughrea on 25th June 2009

Representation:

Appellant(s): In person

Respondent(s): Ms Siobhan McGowan  
Purdy Fitzgerald  
Solicitors  
Kiltartan House  
Forster Place  
Galway

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant commenced his employment with the respondent as an apprentice carpenter in August 1999. He qualified in August 2003 and continued to work with the employer. The business began to quieten down in 2007 and there were many days and weeks when there was no work and he was not paid.

The appellant was offered four weeks work with another employer in July 2007, which he did with the agreement of the respondent. The respondent told him he'd see how things were after the holidays. The other work overlapped with the appellant's annual leave from 30<sup>th</sup> July until 10<sup>th</sup> August 2007. The appellant received a call from the respondent during August to say he wanted the appellant to return on 20<sup>th</sup> August 2007. When the appellant returned there continued to be gaps in the employment. On 12<sup>th</sup> October 2007 the appellant and the respondent agreed that there was no work. The appellant asked the respondent if it would suit him if the appellant no longer worked with him. The respondent agreed and the appellant asked for his P45. Two

apprentices continued to work with the respondent.

The appellant gave evidence that he didn't lodge his claim to the Tribunal, as he had not heard of it and thought that redundancy payments were for larger companies. He asked the respondent in October 2008 if he was entitled to a redundancy payment, but he received a text message from him stating that he was not made redundant and was not entitled to anything.

#### Respondent's Case:

The respondent's representative contested the claimant's entitlement to bring a claim under the Redundancy Acts as his claim was lodged after the 52-week period, on 12<sup>th</sup> December 2008, and the respondent's representative does not accept that there was reasonable cause for the late application.

The respondent gave evidence that the appellant had breaks in his service and had left his employment voluntarily on 23<sup>rd</sup> July 2007, when he left to work with another builder. The respondent did not issue a P45 on this occasion. The appellant seemed uneasy in his work with the respondent and if he got other work he frequently left to do it. The respondent believed the appellant had left, but the appellant contacted the respondent in August and told him that the other job wasn't working out and so he came back. No written contract of employment was issued.

On 12<sup>th</sup> October 2007 the appellant told the respondent that it would be better if he left as he was taking odd days off to work for himself. The respondent contended that he always had work for the appellant. The respondent disputed that he had approached the appellant that day. The respondent was surprised when he received a phone call from the appellant months later seeking a redundancy payment. Other employees had left and gotten jobs, he believed the appellant had secured work. Other employees carried out the appellant's work after he left.

#### Determination:

By majority, the Tribunal determines that the appellant showed reasonable cause for his appeal not being lodged within the 52-week period. He had notified the respondent of his intention to claim his redundancy when he called him in October 2008. The Tribunal is satisfied that the appellant showed there is reasonable cause to extend the time limit for submitting his appeal.

The Tribunal, by majority, having heard both sides' evidence prefers the evidence of the appellant and determines that a genuine redundancy situation had arisen.

The Tribunal determines that there was no break in service in July-August 2007 and that the appellant continued in his employment until 12<sup>th</sup> October 2007.

Accordingly, the Tribunal determines that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 To 2007, based on the following criteria:

Date of Birth:	9 <sup>th</sup> November 1977
Date of Commencement:	25 <sup>th</sup> August 1999
Date of Termination:	12 <sup>th</sup> October 2007
Gross Weekly Pay:	€650.00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. It should be noted that a statutory weekly ceiling of €600.00 applies to payments from the Social Insurance Fund.

Sealed with the Seal of the  
Employment Appeals Tribunal

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