

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

- appellant

CASE NO.

MN430/09

RP439/09

Against

Employer

- respondent

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 B Garvey BL

Members: Mr. B. Kealy
Mr. S. O'Donnell

heard this appeal at Dublin on 23rd September 2009.

Representation:

Appellant : Mr John Murphy, SIPTU Construction Branch, Liberty Hall,
Dublin 1

Respondent: In person.

The decision of the Tribunal was as follows:-

Respondent's Case:

A Director (J) gave evidence. The appellant commenced employment on 4th September 2006 as a General Operative. His service subsequently transferred into the respondent company. On 6 June 2008 he informed the respondent that he had secured work with another company and requested his P45. The appellant was furnished with his P45 and was paid his outstanding holiday pay.

J received a telephone call from the appellant on 13th June 2008. The appellant said that his new job did not work out for him and enquired if the respondent had work available. J informed him that he had only three to four days work and the appellant agreed to work for him for these few days.

Subsequently, the appellant was issued with a second P45.

In early July 2008 work became available and he contacted the appellant. The appellant re-commenced work on 9th July 2008. On 6th October 2008 all employees were told work was coming to an end and that they would be laid off. Most of the staff finished work at the end of October 2008. The appellant finished work on 7th November 2008.

The following week more work became available and he telephoned the appellant. The appellant said he was going to obtain social welfare payments and said if he returned to work could he be paid in cash. J was shocked to hear this and said he would not pay him in cash. Some days later he again telephoned the appellant offering him employment but the appellant declined the offer.

A week later week J again telephoned the appellant offering him work. Again the appellant declined the offer. J then paid the appellant his outstanding holiday pay and issued him with his P45.

Appellant's Case:

The appellant gave evidence. He commenced employment on 4th September 2006. He contended that his employment was continuous until 7th November 2008 when he was informed that no further work was available for him. He was issued with an RP9 that day. He obtained social welfare payments on receipt of his P45 a few weeks later. He had over two years service and felt he was entitled to a redundancy lump sum.

At no stage during his tenure did he inform the respondent that he had secured work elsewhere. He never requested he be paid in cash.

Determination:

The Tribunal carefully considered the evidence adduced at this hearing. Clearly, there is a conflict of evidence between the parties. It is clear to the Tribunal that the appellant terminated his own employment on 6 June 2008 when he notified the respondent that he had secured better work elsewhere and requested his P45 be sent to him. The Tribunal determines that the appellant on this date broke his service and therefore had less than two years service to qualify for a redundancy lump sum. The claims under the Redundancy Payments Acts, 1967 to 1977 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)