

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

– *appellant*

CASE NO.

RP541/2009

MN536/2009

Against

Employer

- *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary B L

Members: Mr. T. O'Sullivan  
Mr P. McAleer

heard this appeal at Cavan on 24th September 2009

#### **Representation:**

Appellant: Ms Bernie Kelly, Monaghan Citizens Information Centre, 23 North Road,  
Monaghan, Co. Monaghan.

Respondent: Michael J. Ryan, Solicitors, Athbara House, Cavan

The decision of the Tribunal was as follows: -

#### **Appellant's Case**

The appellant commenced work as a carpenter with the respondent in June 2005. On Friday evening the 14<sup>th</sup> of March the appellant received a phone call from the respondent informing him that he had no work for him the following week and not to come into work. The respondent told him that there might be work in a couple of weeks and he would contact him to let him know. The situation remained the same for a few weeks without the appellant returning to work. After six weeks the appellant applied for Social Welfare and requested his P45 from the respondent. The appellant received his P45 and a letter from the respondent stating that he had been made redundant due to the downturn in the construction industry.

The appellant was an apprentice carpenter when he commenced work with the respondent, he worked 4 days per week and attended college on Fridays. On Friday the 14<sup>th</sup> of March the

appellant worked in a chapel in Butlersbridge. Prior to working in the chapel the appellant worked on a house in the area but all the appellant's work was completed on that job. The appellant returned the respondent's tools the following week. When the appellant went to the respondent's to get his P45 they talked about redundancy but was informed he was only entitled to €250.00. The respondent's wife wrote the letter stating he had been made redundant.

### **Respondent's Case**

The appellant was employed as an apprentice carpenter. In March 2008 the respondent had three available sites that his employees worked on, a house and two chapels. The appellant was working on the house which had a lot of work yet to be completed. The respondent paid the appellant on Friday evening the 14<sup>th</sup> of March and because it was a Bank Holiday said he would see him Tuesday morning in the house he had been working on. On Tuesday morning the contractor rang to say the appellant had not appeared for work. The respondent tried to contact the appellant but he did not answer the phone. The appellant did not appear for work on Wednesday so the respondent had to employ another carpenter to take the appellants place, invoice for his work submitted to the Tribunal. The respondent had no further contact with the appellant until May when he requested his tools to be returned to him. The appellant was never put on short-time or lay-off by the respondent. The respondent has never seen the letter issued to the appellant stating he was made redundant as it was written by the respondent's wife without his knowledge or consent. The respondent's accountant under instruction completed the appellant's P45 with a cessation date of the 14<sup>th</sup> of March 2008.

The respondent did not issue the appellant with a Contract of Employment or Terms and Conditions of Employment. The respondent did not receive any correspondence for the Citizens Information Centre or from the Department of Social Welfare.

The respondent's wife would not normally have any involvement in the business' affairs. The appellant called to the respondent's house and requested his P45. The respondent was away so the appellant returned and informed her that his new employer would accept a letter stating that he had been made redundant. The appellant dictated the letter to the respondent's wife, which she wrote and signed the respondents name too without his consent.

### **Determination**

Having considered all the evidence adduced the Tribunal find that the letter dated April 2008 and signed by the respondent's wife clearly indicates that the appellant was dismissed by reason of redundancy. The appellant's evidence confirms this. The date on the P45 indicates that the appellant ceased employment with the respondent on the 14<sup>th</sup> of March 2008.

In the circumstances and taking account of all the evidence in the case the Tribunal finds dismissal by way of Redundancy. The appeal under Redundancy Payments Acts, 1967 To 2007 succeeds. The appellant is entitled to a Redundancy Lump sum based on the following criteria.

Date of Birth:	14 <sup>th</sup> November 1986
Date of Commencement:	15 <sup>th</sup> June 2005
Date of Termination:	14 <sup>th</sup> March 2008
Gross Weekly Pay:	€400.00

The award is based on the appellant having been in insurable employment during this period.

The Tribunal finds that the appeal under the Minimum Notice and Terms of Employment Acts, 1973 To 2005 succeeds and awards the appellant €800.00, being the equivalent of two weeks pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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