

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP1354/2008

MN1452/2008

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: Mr M. Gilvarry

Members: Mr T. Gill
Mr P. Clarke

heard this appeal at Loughrea on 24th June 2009
and 7th September 2009

Representation:

Appellant(s) : In Person

Respondent(s) : CIF, Construction House, Canal Road, Dublin 6

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant, who was employed as a painter and decorator by the respondent company gave evidence. He was working with his Foreman on a building site in Ballinasloe. The job, as others in the past, was not going smoothly. The construction company on-site hired painting sub-contractors to finish the job. He finished on-site on January 25th 2008 and had no contact from his employer.

Some time later he received a call to retrieve the company van and tools stating his employer was not happy with the last job. He went and received advice elsewhere. The respondent informed him in July /August he had plenty of work for him but never got back to him. In October 2008 he requested his P60. He sent an RP77 form to the respondent on advice. That evening he received a call from the respondent offering him work, he refused stating he had submitted the RP77 form. He gave evidence of loss.

On cross-examination the appellant stated after the job had been taken over by sub-contractors he did not know if he had any more work, his Foreman would usually inform of the next job to go to, but had not. He disputed a letter he had not received from the respondent offering him alternative

employment.

The appellant's Foreman gave evidence. The respondent did not inform him of alternative employment. He signed on with the Department of Social and Family Affairs and requested his P45 from the respondent. He heard of alternative work with another employer and took it. He told the appellant of it but knew he would not be able to travel to it in Dublin. He agreed with the appellant stating work with the respondent had been "shaky" all jobs were "always behind". He was never contacted by the respondent offering him more work.

Respondent's Case:

The Managing Director of the respondent company gave evidence. The appellant and other staff had problems with the contractor on the Ballinasloe site and got sub-contractors in to finish the job. He contacted a close colleague to inform him his staff were available for work. He explained that in the past he and his colleague and shared staff when each were busy with work available. He assumed they, the appellant and colleagues, had secured work with this person. He left them with the van and tools to carry out this work. He retrieved the van and tools in June 2008.

He spoke to his Foreman and offered him employment but he never came back to him. He received an RP77 from the appellant in October 2008 and contacted him to offer him work but he refused it.

On cross-examination he stated he had not put the appellant on lay-off.

Determination:

Based on the evidence adduced at the hearing the Tribunal finds that the appeal under the Redundancy Payments Acts, 1967 to 2007 succeeds and awards the appellant a redundancy lump sum, which is to be calculated on the basis of the following criteria:

Date of Birth:	26 December 1974
Date of Commencement:	8 July 2002
Date of Termination:	25 January 2008
Gross Pay:	€ 560.00

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

At the outset the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)