

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE - *appellant*

CASE NO.  
RP337/2009  
MN335/2009

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 J. Fahy BL

Members: Mr T. Gill  
Dr. A. Clune

heard this appeal at Loughrea on 23rd September 2009

Representation:

Appellant(s) : Ms Kathy M O'Connor, Scarry O'Connor & Co, Solicitors,  
PO Box No 353, Unit 15, Galway Technology Park, Parkmore, Galway

Respondent(s) : In Person

The decision of the Tribunal was as follows:-

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

The appellant gave direct sworn evidence that he was told by the respondent company that his employment was due to be terminated due to lack of work. He was given an RP50 (redundancy) form and was told that his last day of employment would be 17 October 2008. When he was given this information he actively sought alternative employment during his notice period. He took annual leave on 15 October 2008 to attend an interview in Mullingar and was informed on 17 October 2008 that he was successful. This was his last day working for the respondent. He received a telephone call at 6.01 pm on 17 October 2008 from the respondent informing him that he was being retained in employment for another few weeks. He declined the offer and explained to the respondent that he had secured alternative employment.

Under cross examination he denied that during his two week notice period he made requests to

remain in employment with the respondent company. In response to questions from the Tribunal he confirmed that he believed his employment was to be terminated on 17 October 2008 as the respondent had supplied him with an RP50 form. He never received any letter from the respondent stating that the redundancy notice was withdrawn.

### **Respondent's Case**

Witness for the respondent gave direct sworn evidence that he issued the appellant with a redundancy notice as work had become quiet. During this two week period the appellant requested daily that he be retained in employment. The respondent company held daily discussions regarding the situation and, on 17 October 2008 decided to keep the appellant in employment. The witness contacted the appellant at 3.30 pm on that day and informed him of their decision. The appellant replied that he would think about the offer but ultimately did not accept it. One other employee who was in the same situation as the appellant was also offered his job back. He accepted the offer and remains in employment with the respondent company.

### **Determination**

The Tribunal carefully considered the evidence adduced at the hearing. The Tribunal are satisfied that the notice given to the appellant indicated that he was being made redundant, and this was communicated by the issuing of an RP50 form by the respondent which was not subsequently withdrawn. The respondent indicated to the appellant late on Friday evening of 17 October 2008 that his employment would be continuing, but this was never put in writing to the appellant.

The Tribunal prefers the evidence of the appellant and determines that he be awarded a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of Birth:	9 September 1971
Date of Commencement of employment:	15 October 2004
Date of termination of employment:	17 October 2008
Gross weekly Pay:	€432.12

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

The claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 fails as the appellant received his minimum notice entitlement.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

