

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

– *appellant*

CASE NO.

RP90/2009

MN98/2009

against

Employer

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: Ms. B. Glynn

Members: Mr. B. O'Carroll
Mr. J. Le Cumbre

heard this appeal at Athlone on 31st August 2009

Representation:

Appellant(s): In person

Respondent(s): No appearance or representation

The decision of the Tribunal was as follows:-

Introductory note:

The hearing of this case was scheduled to commence at 2.00pm. The Tribunal waited until 2.20pm to allow sufficient time for all parties to arrive before proceeding with the hearing.

Appellant's case:

In his direct and sworn evidence, the appellant confirmed the details of his employment for the period when employed by the respondent.

On 13 November 2008, the respondent's general manager informed the appellant that due to the downturn in the American tourist business, there was no more work for him but if things improved, they would get back to him. When he heard nothing further, the appellant applied for redundancy from the respondent on 11 December 2008. He subsequently met the general manager who told him that the respondent had no funds to pay the redundancy and that he should apply for same through the Employment Appeals Tribunal.

Determination:

The Tribunal was satisfied that the respondent was duly notified of the hearing. However, there was no appearance by them, or representation on their behalf.

The Tribunal noted the contents of the respondent's T2 form (*Notice of Appearance*) and cover letter dated 30 April 2009 wherein they confirmed that they did not dispute the appellant's claim for redundancy and where they outlined the details to the appellant's employment for the period that they employed him.

Based on the uncontested evidence of the appellant, 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:	15 September 1954
Date of commencement:	02 September 2002
Date of termination:	11 December 2008
Gross weekly wage:	€489.63

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

Having regard to section 5(2) of the Minimum Notice and Terms of Employment Acts, 1973, employees who claim and receive a redundancy payment in respect of lay off or short time are deemed to have voluntarily left their employment and are therefore not entitled to notice. In this case, the appellant applied to be made redundant four weeks after commencing lay off and consequently waived his right to notice. Accordingly, the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)