

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE

RP1345/2008

- appellant

against

EMPLOYER

EMPLOYER

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr J. Killian
Mr K. O'Connor

heard this appeal at Cork on 29th July 2009

Representation:

Appellant :
In Person

Respondent :
Mr. Conor O'Connell, Construction Industry Federation,
Construction House, 4 Eastgate Avenue, Little Island, Cork

The decision of the Tribunal was as follows:-

Respondent's case:

The managing director in his evidence told the Tribunal that where they once had 156 employees, including contractors, they now have 62. They have been in the business thirty years and work as sub-contractors. They have been employing apprentices since 1979/80. FAS now pays the wages while the apprentice is on block release and their record with FAS is second to none. At present they are struggling to get work and it is at cost price. Where they had 12 apprentices they now have only 4. They are picked on merit. They have trained over 100 apprentices in thirty years and this is the first such case taken against the respondent.

After Phase 6 the apprentice would return to the company for Phase 7 and after this the apprentice is certified by FAS. If work was running out the apprentice would be let go with a months notice and issued with a P.45. The company policy is to train as an apprentice and they could then re-apply, and if good and working well, they would re-employ him under a new contract.

The appellant was employed on a trial basis on 7th June 2001. He was then registered as an apprentice plumber with FAS having successfully completed his probationary period on 22nd October 2001. His apprenticeship was completed on 8th September 2006. His employment was terminated following the completion of his apprenticeship contract on 8th September 2006 and he was issued with a P.45. He was dismissed within one month following the completion of his apprenticeship as permitted under legislation. He was then employed as a plumber and a new contract was issued to the appellant on 11th September 2006. There are two separate and distinct periods of employment, one for a contract of apprenticeship and the other as a plumber. His continuity of employment was broken by his dismissal following the completion of his apprenticeship on 8th September 2006. The redundancy should be calculated from the date he started as a plumber on 11th September 2006.

The appellant was a good employee but the market changed and he had to be made redundant.

In cross-examination witness stated that the appellant was aware that he was signing a new contract on 11th September 2006. He was on the apprentice rate on Friday and he was paid the plumbers rate from the Monday.

Appellant's case:

The appellant stated that he was laid off on Friday and taken back on Monday on a new contract. He stated that the respondent company was a great company to work for and the only issue he had was the continuity of his employment for redundancy purposes.

Determination:

The appellant finished his apprenticeship on 8th September 2006 and the respondent re-employed him as a qualified person with a new contract of employment from 11th September 2006.

The Tribunal is of the view that the appellant's continuity of service was broken when he was dismissed on 8th September 2006 following the completion of his apprenticeship as stipulated in Section 7 (4) Redundancy Payments Act, 1967. His redundancy payment is therefore calculated from 11th September 2006 when he started on his new contract as a plumber.

The appellant is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth	08 th March 1981
Date employment commenced	11 th September 2006
Date employment ended	14 th November 2008
Gross weekly pay	€725.40

Please note that this award is being made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Please also note that a weekly ceiling of €600 applies to all payments from the Social Insurance Fund

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

