

## EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:  
EMPLOYEE - *appellant*

CASE NOS.  
RP1437/2008  
MN1512/2008

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. D. Mac Carthy SC

Members: Mr. W. Power  
Mr. G. Lamon

heard this appeal at Dublin on 25 May and 14 December 2009

Representation:

Appellant: Mr. Richard Grogan, of Richard Grogan and Associates,  
16/17 College Green, Dublin 2

Respondent: Mr. John Curran BL, instructed by Mr. Matt Mulvey of Mulvey Kenny & Co.  
Solicitors, College Street, Carlow

The decision of the Tribunal was as follows:-

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

The appellant gave evidence with the assistance of an interpreter. On his last day at work his employer gave him a job to do and told him it was his last job and that there was no need for him to work anymore. He understood what was said because his colleagues understood English better than he did and translated for him.

#### **Respondent's Case**

The respondent is a sole trader. Before he set up on his own he had experience at groundwork. At one time he employed a total of six including the appellant.

On the 6<sup>th</sup> November 2007, he saw the appellant on site with a can of cider in his hand. He told the appellant to go home. A few days later the appellant came to his house and apologised. The respondent decided to give him a chance and gave him back his job.

In September 2008 the appellant and a colleague were working on a site at Navan. The appellant and his colleague went to the bank at lunchtime on Fridays. He suspected that they were drinking on the way back to work, so he watched them. On 12<sup>th</sup> September 2008, a Friday, the appellant and his colleague came back to the site carrying cans of lager. He told them he had enough and that they were sacked. He did not give them any notice. He did not want workers under the influence of drink on a site. They left immediately. A week later the appellant came to him he had no money and wanted to travel to visit his daughter, so he gave him €1.8k to tide him over.

### **Determination**

The Tribunal carefully considered the evidence adduced. The Tribunal finds that the appellant's employment terminated by reason of dismissal for misconduct. Therefore the claim under the Redundancy Payments Acts, 1967 to 2007 fails.

The Tribunal notes that the respondent paid the appellant €1.8k following the termination of his employment. The Tribunal finds that at the time of the dismissal it was reasonable of the respondent to decide he could not keep the appellant on site any longer. The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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