

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE

- appellant

MN1433/2008

RP1334/2008

against

EMPLOYER

- respondent

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Sheedy

Members: Mr D. Hegarty
Mr K. O'Connor

heard this appeal at Mallow on 30th July 2009

Representation:

Appellant :

In person

Respondent :

Mr Dave Ryan

The decision of the Tribunal was as follows:-

Appellant's case:

The appellant in his evidence told the Tribunal that he commenced his employment with the respondent on 29th February 2000 and continued working until 9th August 2000 when he went to

Australia. He returned from Australia and re-commenced working with the respondent on 3rd September 2001. On 15th May 2008 the respondent told him he might be letting him go and on 1st June 2008 the respondent phoned him saying he did not need him to come to work the next day as rostered and might be letting him go for a few weeks. In mid June 2008 he received his P.45 and this was the first indication he got that his employment was terminated. He did not receive Form RP50 and he was not told the reason as to why he was made redundant. In August 2008 he phoned the respondent seeking payment of his redundancy and he was told that he may be taken back after Christmas 2008. In October 2008 he requested a meeting with the respondent and he told the appellant that he would be paid his redundancy and any other monies owing. When he met the accountant on 24th October 2008 the appellant was told he was due redundancy only from 2004.

The appellant did not receive a P.45 on 19th November 2004. While there was no work for a couple of weeks, he was not put on temporary lay off and he continued working from 29th November 2004. The appellant stated that he worked all through 2004 apart from the period 19th November – 29th November 2004. He was registered as an apprentice with FAS on 1st June 2004 and completed his apprenticeship in November 2007. The appellant has been in continuous employment since 2001 and during the period of his apprenticeship there were periods when he attended block release with FAS.

During cross-examination the respondent thought that the appellant's employment was broken in 2004 when a P.45 was issued. The respondent only had a copy of a pro-forma P.45 which he stated was issued on 19th November 2004. The appellant got verbal notice of his employment being terminated but he was not paid.

Determination:

The appellant was let go on 19th November and re-commenced on 29th November 2004 therefore the appellant's service is continuous as stated in Section 9 (2) and (2)(a) and Schedule 3 Section 4, Redundancy Payments Act, 1967. Based on the evidence and documentation in this case the appellant was in the continuous service of the respondent from 3rd September 2001 to 1st June 2008. The appellant is due a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth	21 st July 1978
Date employment commenced	03 rd September 2001
Date employment ended	01 st June 2008
Gross weekly pay	€617

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

The appellant is also awarded €2,468 which is the equivalent of four wages under the Minimum Notice and Terms of Employment Acts, 1973 to 2005

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

