

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

MN109/2009

RP101/2009

WT44/2009

against

EMPLOYER

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr G. Phelan  
Mr. T. Kennelly

heard this appeal at Limerick on 28th October 2009

Representation:

Appellant(s): Mr. Michael Kiely, Siptu, Limerick No 2 Branch, 4 Church  
Street, St John's Square, Limerick

Respondent(s): The respondent in person

The decision of the Tribunal was as follows:-

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

The respondent told the Tribunal that he had undertaken work for a Co. R on and off since 1986. He was informed that this work had been terminated due to the fact that the appellant's wife kept contacting the union. The appellant's wife wanted him to sign a form for his son who was going to college, which he declined to do. In August 2008 the appellant left his employment and went to work elsewhere. The appellant returned the respondent's two vans. The appellant was a good worker but he had no job for him. The appellant was paid everything that he was entitled to and he received his holiday pay. Co R would not have allowed the appellant on site unless he was properly paid. He accepted that the union wrote to him on 27 January 2008 to discuss the appellant's conditions of employment. He paid the appellant for twelve and a half years. The appellant's employment ended on 8 September 2008. While Co. R still had ongoing work it had employed private contractors to do it. He (the respondent) had been asked to move his machinery from Co. R's site. The respondent accepted that a redundancy situation existed. He had completed form RP50 as he had no work for the appellant.

## **Appellant's Case**

The appellant commenced employment with the respondent in May 1995. He joined the trade union. He worked some distance from his home and he did not get the correct rate of pay. He worked from 7.30a.m. until 7.00p.m. Monday to Friday and on Saturday he worked from 8a.m. until 1p.m. He did not have a written contract of employment. He did not receive payslips. In January 2008 he contacted the respondent regarding his hourly rate of pay. The appellant was seeking an increase of one euro per hour but he said that he could not afford it. The trade union wrote to the respondent and requested a meeting but it did not take place. At the respondent's request the appellant returned the van to him. The appellant worked during his summer holidays. On around 9 September 2008 the respondent informed him that he no longer had a job for him. He accepted that his former employer agreed that he should be paid redundancy but he had not received it. The machine was taken off Co. R's site because the respondent would not pay him the correct rate of pay.

## **Determination**

While there was much conflict in the evidence before the Tribunal it was common case that the respondent was told to take his machinery from Co. R's site. The respondent admitted that a genuine redundancy situation existed in his business and that he had completed form RP50. The Tribunal is satisfied that the work undertaken by the appellant was done during his holidays and this did not constitute a break in his service.

The Tribunal finds that the appellant is entitled to a redundancy lump under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria: -

Date of birth	14 March 1957
Date employment commenced	14 May 1995
Date employment ended	9 September 2008
Gross weekly pay	€615.00

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

Please note that there is a weekly ceiling of €600 on all awards made from the Social Insurance Fund.

The Tribunal is satisfied that the appellant did not receive payment in lieu of notice and he is therefore entitled to compensation in the amount of €3690.00 which is equivalent to six weeks gross pay (€615.00 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The appellant received his holiday pay entitlements and therefore his claim under the Organisation of Working Time Act, 1997 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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