

**EMPLOYMENT APPEALS TRIBUNAL**

APPEALS OF:

CASE NO.

EMPLOYEE - **appellant**

MN310/2009

WT128/2009

RP313/2009

against

EMPLOYER

EMPLOYER - **respondent**

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. M. Forde  
Mr D. McEvoy

heard this appeal at Cork on 22nd October 2009

Representation:

\_\_\_\_\_

Appellant :

Mr Jan Jaroslaw Potocki, Polish English Translation,  
"Pilawa", Office 19, 21-23 Oliver Plunkett Street, Cork

Respondent :

In person

The decision of the Tribunal was as follows:-

The appellant went on holidays to Poland around 11<sup>th</sup> July 2008 and returned to Ireland around 15<sup>th</sup> August 2008. It was the appellant's case that on his return from holidays he worked on site A on one of the respondent's contracts. It was the respondent's case that the appellant had not been designated to that site, that he had no proof that he had been there and no payment was made

to him in respect of any work there. It was common case that around late August the respondent asked the appellant to repair a wall in the Kinsale area. According to the respondent he arranged to meet the appellant at a certain point to take him to the site and waited there for around one and half hours but the appellant did not show. The respondent unsuccessfully tried to contact him by phone. He then went to the site where a further unsuccessful attempt was made to contact the appellant by phone. The respondent returned to the arranged meeting point a second time but the appellant was not there. The appellant never returned to work after that. According to the appellant, a friend drove him around the area for about an hour but they could not find the site. He phoned the respondent but got no reply. Shortly thereafter the respondent told his (the appellant's) friend that he had no work for the appellant. Some weeks later the appellant requested his P.45. It was common case that while the appellant had been on holidays in Poland earlier that summer the respondent had given him a loan of €500. The respondent denied the appellant's assertion that he told him that he could keep the money but it was the respondent's evidence that he would not pursue him for it.

**Determination:**

The Tribunal accepts the respondent's evidence that the appellant failed to show to repair the wall, that he could not contact the appellant by mobile that day and that the appellant never returned to work thereafter. Accordingly, the Tribunal finds that the appellant resigned from his employment. In the circumstances the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

As the appellant resigned he appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed.

The holiday claim was dealt with by a Rights Commissioner and is currently under appeal to the Tribunal by the respondent, and is to be heard at a future date.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

