

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE

- appellant

MN1859/2009

WT834/2009

RP1048/2008

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 S. Behan

Members: Mr. P. Casey
Ms H. Kelleher

heard this appeal at Cork on 6th November 2009

Representation:

Appellant :

In person

Respondent :

Ms Muireann McEnery, Peninsula Business Services (Ireland) Limited,
Unit 3, Ground Floor, Block S, East Point Business Park,
Dublin 3

The decision of the Tribunal was as follows:-

The appellant's employment ended on 30th November 2007. Form T1A, lodging an appeal under the Redundancy Payments Acts, 1967 to 2007 was received by the Tribunal Secretariat on 7th October 2008.

This case was listed for hearing on 10th June 2009 and while the appellant was present at the hearing the respondent was not present or represented. The appellant confirmed that he had received his redundancy payment however he indicated that he was also due payment in respect of notice and outstanding holidays. On the reverse side of form T1A the appellant stated that he was due payment in respect of outstanding holidays however he had not ticked the appropriate box at the front of the form. The Tribunal consented to the appellant amending Form T1A and to add claims in respect of the Organisation of Working Time Act, 1997 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The case was re-listed for hearing on 6th November 2009 and on this date the respondent was represented.

Preliminary issue:

The respondent's representative raised the question of the Tribunal's jurisdiction to hear the claim under the Organisation of Working Time Act, 1997 as it was received by the Tribunal outside the permitted six month timeframe as stipulated in Section 27 (4) of the Act.

The Tribunal then heard evidence from the appellant to establish whether his failure to present the complaint within the six month timeframe was due to "reasonable cause" as stated in Section 27 (5) of the Act.

Appellant's case:

The appellant received a letter on 9th November 2007 informing him that his employment was ending on 30th November 2007. A week after receiving this letter his wife gave birth to a baby and the fact that his wife was unwell meant that he was distracted. The respondent had told him that he would be paid his holidays and notice and any other monies due. He received three weeks notice but was due six weeks therefore he is now due the balance of three further weeks. The appellant checked on the website and he assumed he had twelve months to lodge a claim. His manager gave him the impression that he would be re-starting in his position, however the appellant was not subsequently offered a position.

Determination:

The Tribunal is unanimous that the reasons given by the appellant to justify his failure to lodge a claim under the Organisation of Working Time Act, 1997 within the six month period beginning on the date of the contravention, was not "due to reasonable cause" as stipulated in Section 27 (5) of the Act. The appeal under the Organisation of Working Time Act, 1997 is therefore dismissed.

No award is being made under the Redundancy Payments Acts, 1967 to 2007 as the appellant has received his statutory redundancy. The parties reached agreement in relation to the outstanding

notice payment and the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

