

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE – appellant

CASE NO.
RP70/2009
MN83/2009

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 Cagney BL

Members: Mr D Winston
Mr J Dorney

heard this appeal at Dublin on 5th June 2009, 22nd October 2009 and 5th January 2010

Representation:

Appellant: Mr Marcin Szulc
Maguire McClafferty, Solicitors,
8 Ontario Terrace, Portobello Bridge, Dublin 6

Respondent: Mr Brendan Weldon
Brendan Weldon & Co, Solicitors,
Meadow Brook House, Moone, Co Kildare
attended on the first and second days of the hearing.
There was no appearance or representation on the last day of hearing

The decision of the Tribunal was as follows:

Respondent's Case:

The respondent did not attend the first day of hearing due to medical reasons. The hearing was adjourned on the grounds that it would proceed on the next occasion. The respondent did attend the second day of hearing. The respondent's representative produced a doctor's note stating that the respondent could not attend that hearing due to medical grounds. The respondent's representative explained that he was not in a position to call evidence on behalf of the respondent. He did not dispute the evidence given by the appellant. There was no appearance by, or representation on behalf of, the respondent on the final day of hearing. The Tribunal is satisfied that the respondent was on notice of the hearing.

Appellant's Case:

On the first day of hearing the appellant's representative withdrew the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The appellant gave evidence that he commenced his employment with the respondent on September 4th 2006. He contended that it was the respondent's husband who hired him and who ran the business. He met the respondent twice in two years and had not discussed work with her.

The appellant took holidays from July 22nd 2008 until August 25th 2008. When he returned the respondent's husband told him that there was no work, but to wait, as there would be later. He gave the appellant addresses of building sites to go to, but there was no work available at those sites. He wrote to the respondent's husband and asked for work. He stated that if there was no work he should dismiss him and give him his P45. He received his P45 at the end of November, which stated that September 5th 2008 was the date of termination.

The appellant's representative contended that the appellant's redundancy payment should be calculated at the rate of €14.88 per hour as awarded by a Rights Commissioner under the Payment of Wages Act 1991, and not at the rate of €10.00 per hour which the appellant received during his employment.

Determination:

This appeal was withdrawn on the 22nd October 2009, after the evidence was heard, and subsequently re-entered on the 4th December 2009. On the final day of hearing the appellant's representative requested that the Tribunal issue a determination on the case.

On October 22nd 2009, the Tribunal heard the undisputed evidence of the appellant and made its decision prior to the case being withdrawn. On the basis that the case has now been re-entered the Tribunal is now issuing that decision.

The Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 To 2007, based on the following information:

Date of Birth:	10 th July 1961
Date of Commencement:	4 th September 2006
Date of Termination:	5 th September 2008
Gross Weekly Pay:	€580.32

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)