

**EMPLOYMENT APPEALS TRIBUNAL**

**CLAIM(S) OF:**  
EMPLOYEE  
- *claimant*

**CASE NO.**  
UD1399/2008  
RP1242/2008  
MN1332/2008

WT577/2008

against

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  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. B. O'Carroll  
Mr. T. Kennelly

heard this claim at Nenagh on 16th July 2009

Representation:

Claimant(s) : Mr Ronan O'Hare, 5 The Courtyard, Emmet Street, Birr, County Offaly

Respondent(s) : Mr Brendan McNamara, Devitt Doorley Mac Namara, Solicitors, Mountrath,  
Portlaoise, Co Laois

The determination of the Tribunal was as follows:-

**The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 and the Organisation of Working Time Act, 1997 were withdrawn on the day of the hearing.**

**Respondent's case**

The director gave evidence on behalf of the respondent. The company had temporarily laid off the claimant in October 2007 due to a down turn in business. At the time they had 65 employees now

they currently have 15. He maintained that the claimant is still temporarily laid off. In May 2008 the respondent placed an advertisement in a local paper seeking ten general workers for an immediate start. He explained that this advertisement sought workers to make gates, which was different to the claimant's duties. Though the claimant was a very good employee he was not suitable to these vacancies advertised. He agreed that the claimant had telephoned the company on a number of occasions seeking to be re engaged. The respondent had not issued the claimant with a P45 as work may turn up.

### **Claimant's case**

The claimant gave evidence that he had commenced employment with the respondent in 2005. He did not receive a contract of employment. He was placed on a three-day week in August 2007 and laid off in October 2007. He rang the respondent on a number of occasions seeking his return to work. When he saw the advertisement for the vacancies he telephoned the respondent as he presumed they were advertising his job. He had never made the gates but he was not given the chance to either. He agreed with the respondent that he normally worked on a production line. He has not received his P45.

### **Determination**

The applicant commenced employment in 2005. He was laid-off in October of 2007. The claimant has been on lay off since and up to the date of the hearing. The applicant is entitled to look for redundancy in circumstances where the employer was not in a position to offer full time employment for a minimum of thirteen weeks.

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 criteria:

Date of Birth: 15<sup>th</sup> April 1971  
Date of Commencement: 6<sup>th</sup> January 2005  
Date of Termination: 5<sup>th</sup> October 2007  
Gross Weekly Pay: €280.00

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

The claim under the Unfair Dismissal Acts 1977 to 2007 fails.  
Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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