

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.
RP893/2009, MN837/2009
WT352/2009

EMPLOYEE

against

EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr T. Taaffe

Members: Mr F. Cunneen
Ms. E. Brezina

heard this appeal at Dublin on 8th February 2010

Representation:

Appellant : Mr John Murphy, SIPTU, Construction Branch, Liberty Hall, Dublin 1

Respondent : No representation listed

The decision of the Tribunal was as follows:

Respondent's Case

The owner of this company told the Tribunal that the appellant's last day of work was 8 February 2008 and his termination date was 29 February. A P45 issued to the appellant subsequent to that date and clearly stated that was the date his employment ended. The witness insisted that the appellant left of his own accord and then pursued his own interests. He acknowledged the receipt of at least one letter in March 2008 from the appellant's trade union representative concerning this case. Since he had "a very good understanding" with the appellant the owner made direct contact with him concerning the contents of those letters. At that time the appellant was not available to return to the respondent. The witness further maintained the respondent had work for the appellant in August 2008 and had never refused the appellant that work. He confirmed to the Tribunal that the company had not been trading for eighteen months up to the time of this hearing.

Appellant's Case

The appellant commenced employment with the respondent in August 2001 and apart from his main function as a scaffolder he also undertook general work. Due to injuries sustained from an accident at home the appellant found himself unable to work with the respondent from 8 February 2008. He then went "on continuous sick leave" up to 15 August when his medical doctor declared him fit to return to work. However, when he contacted the owner with a view to returning to work he was told there was no work available and to go elsewhere for it. Some time later he sought a declaration of redundancy from the respondent but the owner rejected that approach saying the respondent did not have the funds to give it.

Determination

Having heard and carefully considered the evidence and documentation from both parties the Tribunal finds that a redundancy situation did not occur in this case. The Tribunal is satisfied that the respondent did issue a P45 to the appellant in March 2008. Furthermore, the Tribunal accepts the respondent's evidence that there was work available for the appellant in August 2008. The respondent therefore discharged the onus placed on them to satisfy the Tribunal that a redundancy situation did not arise.

Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Since there was no dismissal in this case it follows that the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

The Tribunal is satisfied that the appellant had outstanding leave entitlements at the time of his cessation of employment amounting to €1050.00. Therefore he is awarded that amount under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

