

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – **Appellant**

RP1346/2009

against

EMPLOYER - **Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. F. Crawford B.L.

Members: Mr. D. Peakin
Mr. S. O'Donnell

heard this appeal at Dublin on 24 March 2010

Representation:

Appellant:

In person

Respondent:

In person

The determination of the Tribunal was as follows:

Determination:

This was a case where there was a dispute between the parties over the starting date of the appellant's employment for the purposes of the Redundancy Payments Acts. There was no dispute over the fact of redundancy and the rate of pay. The respondent, who was a sole trader operating as a bricklaying contractor, employed the appellant from 25 September 2000. The appellant worked as a general operative but had aspirations to enter an apprenticeship as a carpenter, something which was not possible while he was in the respondent's employ. The employment was uneventful until some time in the spring of 2005 when the appellant came to believe that he was being treated less favourably than the respondent's son in law, the respondent's second employee. From 20 June 2005 the appellant received a significant pay increase. The appellant was still dissatisfied and resigned from the employment with effect from Friday 15 July 2005.

The appellant's position is that on the following Sunday evening 17 July 2005 he phoned the respondent and sought his job back and it was agreed that he would take the two weeks holidays for which he had been paid on 15 July 2005 and that he returned to work on Tuesday 2 August 2005

after the public holiday, being paid in cash for the first two weeks after the holidays until he again began to be paid through his bank account.

The respondent's position is that after the appellant resigned he made arrangements to take on another employee on a trial basis, the trial was unsatisfactory and during this period there were several phone calls from the appellant to the effect that he had made a mistake and wanted to return to the respondent's employ. This was acceded to and the appellant returned to work for the respondent on 15 August 2005. The appellant was initially paid in cash on his return because the respondent's bookkeeper was on holidays at the time of the appellant's return to work.

Paragraph 4 of Schedule 3 of the Redundancy Payments Acts, 1967 to 2007 provides

For the purposes of this Schedule employment shall be taken to be continuous unless terminated by dismissal or by the employee's voluntarily leaving the employment.

Having regard to the records provided by the respondent, in particular the appellant's tax deduction card, the Tribunal is satisfied, on the balance of probabilities, that after the appellant resigned from the employment he did not return until Monday 15 August 2005 and in doing so voluntarily left the employment. Accordingly the Tribunal accepts the respondent's contention that the commencement date for the purposes of the redundancy lump sum calculation is 15 August 2005.

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	31 August 1982
Employment commenced	15 August 2005
Employment ended	24 April 2009
Gross weekly pay	€1,066-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)