

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

Appellant

CASE NO.
RP1240/2009
MN1096/2009
WT486/2009

against

EMPLOYER

Respondent

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 J Flanagan BL

Members: Mr M Murphy
Ms M Finnerty

heard this appeal at Navan on 17th February 2010

Representation:

Appellant(s): In person

Respondent(s): Mr William O'Reilly, Steen O'Reilly, Solicitors,
31/34 Trimgate Street, Navan, Co Meath

The decision of the Tribunal was as follows:

The appellant had initiated his appeal in the usual manner by way of serving a Form T1A. The Tribunal was concerned that the name shown in the form appeared to be that of an unincorporated association and not a legal person. Having ascertained the correct legal name the Tribunal amended the name of the respondent to that which appears above with the consent of the parties.

The claimant withdrew his claims under the Minimum Notice and Redundancy Payments Acts.

In completing the Form T1A the claimant had indicated that he was making a claim to the Tribunal in the first instance under the Unfair Dismissals Acts but had failed to make an objection to the matter being heard by a Rights Commissioner. The Tribunal advised the appellant that the Tribunal has no jurisdiction to hear a claim under the Unfair Dismissals Acts unless there is an objection to the matter being heard by a Rights Commissioner or by way of an appeal from a recommendation of the Rights Commissioner. The claimant stated to the Tribunal that it was not his intention to

pursue a claim under the Unfair Dismissals legislation.

In regard to the claim under the Organisation of Working Time Act the Tribunal finds that the claimant had taken more holidays than he had accrued in that year. The Tribunal notes the claimant's assertion that he had accrued holiday leave in the previous year which he had not taken. The Tribunal is not entitled to take into account a 'rollover' of holiday entitlement from the previous year and the claim under the Organisation of Working Time Act is therefore dismissed.

The main issue raised by the claimant before the Tribunal and dealt with in greatest detail in the Form T1A was a claim that he had not been paid for a substantial proportion of hours worked by him. The Tribunal endeavoured to assist the claimant in resolving this issue notwithstanding the fact that no claim had been brought under Payment of Wages Act and that no such claim was properly before the Tribunal. The Tribunal examined a sample of his payslips and it appeared that the claimant had been properly paid in respect of every week examined by the Tribunal and the claimant then agreed that in respect of each week examined by the Tribunal he had been paid the correct amount. The claimant then argued that the payments might not be properly accounted for, but he did not identify any particular period for the Tribunal to examine. The claimant alleged that there had been non-compliance with the Finance Acts in relation to payments made to him whereby his wages were in part paid to him in cash from the cash register. The respondent's accountant gave evidence that all payments to the claimant had been correctly accounted for and adduced in support of his oral evidence payslips produced from payroll software. The Tribunal is not satisfied from the evidence before it that there was any merit in the claimant's allegation regarding tax compliance.

In the light of the foregoing the Tribunal finds that the claims brought were frivolous and vexatious and accordingly awards the sum of €50.00 (fifty euro) to the respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)