

**EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL OF:**  
EMPLOYEE

**CASE NO.**  
RP559/2009  
MN551/2009

- *claimant*

Against

EMPLOYER

- *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr L. Ó Catháin

Members: Mr J. Hennessy  
Mr T. Kelly

heard this appeal at Nenagh on 11th March 2010

**Representation:**

Appellant: In Person

Respondent: In Person

The decision of the Tribunal was as follows:-

**Claimant's Case**

During direct evidence the claimant told the Tribunal that on the 5<sup>th</sup> September 2008 the respondent asked him if he would take a few weeks off because work was slack. The claimant agreed and when he went to his social welfare office to seek payment he was told that he required a P45. the claimant rang the respondent company and asked for his P45 for the social welfare office. He received it a few days later and brought it to the social welfare office.

As time went by, the claimant did not hear back from the respondent. Approximately four months later the claimant applied for his redundancy. The claimant went to the Citizens Information Centre in Charleville, filled in a form and sent it to the respondent company. The claimant did not hear back from the respondent and therefore submitted a claim to the Tribunal.

## **Respondent's Case**

During direct evidence the respondent told the Tribunal that the claimant worked for him for approximately 5 years. The week prior to the 5<sup>th</sup> September 2008 the respondent had to let his brother go. The respondent agreed that on the 5<sup>th</sup> September 2008 he asked the claimant to take a few weeks off because work was slow.

The respondent said he was shocked when the claimant phoned the following Monday looking for his P45 because there had not been any intention to terminate the claimant's employment. However, things got progressively worse and the remaining employees were placed on short time, working three days per week and some weeks there was no work.

The respondent said he did not get the opportunity to put the claimant on a three day week because he requested his P45. The respondent told the Tribunal that he was not aware that the claimant required the P45 for social welfare. He thought the claimant may have gotten work elsewhere.

RG, who worked in the office of the respondent company, told the Tribunal that she did not know what happened on the 5<sup>th</sup> September 2008 but the following Monday she received a phonecall from the claimant. The claimant told her that the respondent had asked him to take a few weeks off because work was slow and that he needed his P45. The claimant told her he would collect the P45 that afternoon but did not tell her that it was for social welfare purposes.

The claimant then told the Tribunal that he did not explain to Rosita about the social welfare situation because he had already explained it to H in the office first.

The Tribunal asked the claimant if he had a copy of the redundancy form that was sent to the respondent. The claimant told the Tribunal that he did not have a copy of it and the respondent told the Tribunal that he did not receive it. The respondent showed documents to the Tribunal, one of which was an RP9, completed by the claimant.

## **Determination**

The Tribunal accepts the evidence of the claimant that he received advice from the local social welfare office that a P45 was required for payment. Based on the documents shown to the Tribunal by the respondent, the Tribunal finds that the RP9 was served on the employer after the required period of lay off and that the employer did not formally respond. Accordingly, the claim under the Redundancy Payments Acts, 1967 to 2007 is successful and the claimant is entitled to a redundancy payment based on:

|                            |                                 |
|----------------------------|---------------------------------|
| Date of Birth              | 22 <sup>nd</sup> September 1972 |
| Date of Commencement       | 2 <sup>nd</sup> February 2004   |
| Date of Termination        | 5 <sup>th</sup> September 2008  |
| Normal Weekly Remuneration | €747.18                         |

This award is subject to the appellant having been in employment, which is insurable for all purposes under the Social Welfare Consolidation Act 2005.

A ceiling of €600 per week applies to any payments from the Social Insurance Fund.

An employee who claims and receives a redundancy payment in respect of lay off or short time is deemed to have voluntarily left his/her employment and therefore not entitled to notice under the

Minimum Notice and Terms of Employment Acts, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

