

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

EMPLOYEE

– *appellant*

CASE NO.

RP509/2009

against

EMPLOYER

– *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J Flanagan BL

Members: Mr F Cunneen
Ms M Maher

heard this appeal at Dublin on 26th August 2009 and 17th December 2009.

Representation:

Appellant: In person

Respondent: In person

The decision of the Tribunal was as follows: -

On the first day of hearing an issue was raised that the respondent named on the Form T1A was the managing director of the company that had employed the appellant rather than the company itself. The managing director was not willing to consent to the Form T1A being amended so that the matter could proceed that day against the company as employer. The Tribunal therefore adjourned the matter to permit the appellant to file a second T1A with the company named as respondent.

Respondent's Case

On the resumed date the managing director of the respondent company appeared and represented the company. The managing director told the Tribunal that the appellant was not made redundant, but that he was released because of the general downturn in the construction industry. If business had picked up he would have been re-employed. The managing director accepted that there was no

work for him still.

The managing director stated that there was a break in the appellant's service from approximately 25th July 2008 to 22nd August 2008, so that the appellant did not have continuous service and therefore was not entitled to a redundancy payment.

Determination

It was accepted by both parties that the appellant was released due to a down turn in the construction industry and that the respondent had no work for the appellant even at the date of the hearing. The appellant's job no longer exists. The Tribunal finds that at the date of termination of employment the respondent did not have a reasonable expectation that the lack of sufficient work to employ the appellant was temporary and therefore there was no lay-off at that time. The Tribunal finds that the appellant was made redundant. The Tribunal exercises its jurisdiction to disregard the alleged break in service and deems service to have been continuous.

The Tribunal finds that the appellant is entitled to a redundancy payment based on the following information:

Date of Birth:	1 st July 1981
Date Employment Began:	26 th January 2007
Date Employment Ended:	5 th February 2009
Gross Weekly Pay:	€400.00

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 Redundancy Payments Acts, 1967 to 2007 succeeds.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)