

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
RP2467/2009

against
EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire B.L.

Members: Mr J. Hennessy
Ms. N. Greene

heard this appeal at Abbeyleix on 10th June 2010

Representation:

Appellant(s) : Mr Henry O'Shea, SIPTU, 3 Peppars Court, Portlaoise,
Co. Laois

Respondent(s) : Mr. Tim O'Connell, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant gave direct evidence that he commenced working for the respondent company in October 1990. He was certified as being medically unfit for work from 7 June 2002 until 25 September 2002 and submitted medical certificates to the company during that time. He did not work for any other employer during this period. He returned to work on 25 September 2002 and resumed his normal duties. He clocked in as normal on that date and no supervisor or security guard prevented him from doing so. He did not receive a P45 at that time and no company representative told him that he had broken his service. He accepted that he received a P60 in 2003 and his date of commencement of employment on that form was recorded as 25 September 2002. He was made redundant on 28 August 2009.

Respondent's Case

The Financial Controller of the respondent company gave evidence that the company has a P45 on file for the appellant for the year 2002. The company only issues a P45 on request and the appellant was issued with a P45 in 2002. She told the Tribunal that it would not have been possible for the appellant to clock in as normal on 25 September 2002 as he would have been registered as inactive on the clock-in system. The appellant left of his own accord in June 2002 and he would have had to contact a member of management in order to return to work in September 2002. A new contract was not issued to the appellant in September 2002 when he returned to work. It is company policy that an employee must submit medical certificates if absent from work on sick leave. No such medical certificates are on the appellant's file for the period from June 2002 to September 2002.

Determination

The Tribunal carefully considered the evidence from both parties and noted the clear conflict of evidence. The Tribunal prefers the evidence given by the appellant and is satisfied that there was continuity of service without interruption. Accordingly the Tribunal determines that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of Birth:	9 December 1971
Date of commencement of employment:	16 October 1990
Date of termination of employment:	28 August 2009
Gross weekly pay:	€473.36

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

