

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee
– **First Named Appellant**

RP2192/2009
MN1831/2009

Employee
– **Second Named Appellant**

MN1726/2009

against

Employer
-Respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly B.L.

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

heard these appeals at Dublin on 16 June 2010

Representation:

Appellants: Mr. James Coughlan, Irish National Painters
And Decorators Trade Group, SIPTU,
Liberty Hall, Dublin 1

Respondent: Mr. Peter Dempsey, Dempsey Solicitors,
Suite 107, The Capel Building,
Mary's Abbey, Dublin 7

The determination of the Tribunal was as follows:

At the outset it was conceded on behalf of the first named appellant that he had received his entitlements under the Redundancy Payments Acts, 1967 to 2007 and, accordingly, the appeal under those Acts was withdrawn. The appeal by the second named appellant under the Minimum Notice Acts, in respect of five weeks' notice pay, was conceded on behalf of the respondent. The matter that remained to be resolved was the claim of the first named appellant under the Minimum Notice Acts.

The first named appellant commenced employment with the respondent as a painter on 13 June 2003. The employment was uneventful until the respondent's business got into financial difficulty and on 28 April 2009 a meeting was held attended by the first named appellant and two other

employees, one of the directors of the respondent and the business consultant (the consultant) brought in by the directors to oversee the direction of the respondent and in particular the collection of debts.

It is the respondent's position that on 28 April 2009 the consultant told the meeting that, due both to the financial circumstances in which the respondent found itself and the lack of new business, there was a serious prospect that the business would not survive beyond the builders' holidays which were due to commence on 17 July 2009.

There was a further meeting, with the same attendees, held on Monday 6 July 2009. It is the respondent's position that at this meeting the consultant gave verbal notice that, for the first named appellant and one of his two colleagues, there would be no work after the builders' holidays which were due to end on Friday 31 July 2009. The consultant conceded that this meant that, in the case of first named appellant, he had been given two days' less notice than the statutory period of four weeks' notice for someone with his length of service being between five and ten years.

The first named appellant's position was that on 6 July 2009 the consultant gave less than one week's notice that his employment would end on Friday 10 July 2009 and that before that notice expired the director offered a further week's work on show homes and a Dublin 4 project. The first named appellant finished work on Thursday 16 July 2009 due to his wife going into labour. His position is further that it was only at the end of the builders' holidays on 31 July 2009 that the director told him that there was no more work and his job was to be made redundant.

It is common case that the first named appellant received two weeks' holiday pay for the builders' holidays and was paid for the week in arrears.

Determination:

The Tribunal is satisfied that the first named appellant was given notice of termination by reason of redundancy at the meeting on 6 July 2009. However it is not open to the respondent to count the two weeks of builders' holidays as part of the notice period. Holiday pay is a separate entitlement from notice pay. Accordingly, the Tribunal awards the first named appellant €2,075-76, being two weeks' and two days' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The Tribunal awards the second named appellant €4,324-50, being five weeks' pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)