

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE - *appellant*

CASE NOS.
RP829/2010
WT252/2010

against

EMPLOYER – *respondent*

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S C

Members: Mr. E. Handley
Mr. N. Dowling

heard this appeal at Dublin on 16th September 2010

Representation:

Appellant: Ms. Lorraine Walsh of Citizens Information Centre, Unit 2,
Killegland Square, Ashbourne, Co. Meath.

Respondent: Ms. Muirreann McEnery of Peninsula Business Services (Ireland) Limited,
Unit 3 Ground Floor Block S, East Point Business Park, Dublin 3

The decision of the Tribunal was as follows:-

The respondent conceded that the appellant was owed one week's holiday pay.

On 30 June 2009 the appellant was placed on temporary lay off. The job he had been working on was finished and there was a difficulty concerning a proposed move to a different location. The respondent issued the appellant with a form RP 9. The following day he signed the form and returned it to the respondent. The respondent did not correspond with the appellant regarding the return of the form before 4 weeks had elapsed. The appellant wrote to the respondent about 15 December 2009 requesting his P.45.

No P.45 or P.60 in respect of 2009 issued to the appellant.

Determination

The appellant was laid off when he was issued with a form RP 9 with Part A dated 29th June 2009. He completed Part B claiming redundancy and dated his reply 30 June 2009. The Act is clear that a minimum period of 4 weeks lay off is required to ground a redundancy claim, on foot of lay off, the appellant's action was premature.

It was open to the appellant to serve a new RP 9 after the expiry of the 4 weeks on lay off and to terminate his employment under Section 12 (2) of the Redundancy Payments Act 1967 as amended. He did not do so, although it is still open for him to do so.

The Tribunal was unable to find a point at which the appellant's employment was terminated either by resignation or by dismissal. Communication by both sides was somewhat imperfect. The appeal under the Redundancy Payments Acts, 1967 to 2007 fails, with the proviso that Section 12 (2) of the Act remains open.

The respondent conceded that 5 days holiday pay is due and the Tribunal awards the appellant compensation of €660.00 being one week's pay. The appeal under the Organisation of Working Time Act, 1997 succeeds.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)