

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

UD872/2009

against the recommendation of the Rights Commissioner in the case of:  
EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr. W. O'Carroll  
Mr T. Kelly

heard this appeal at Limerick on 24th June 2010

Representation:

---

Appellant:

Ms. Aisling Murray, Michael D. Murray & Co., Solicitors, 86 O'Connell Street, Limerick

Respondent:

Mr. Gerard Kennedy, SIPTU (No. 1 Branch), Unit 4 Church Street,  
St. John's Square, Limerick

The determination of the Tribunal was as follows:-

This case came to the Tribunal by way of an appeal by the employer against the recommendation of the Rights Commissioner r-069331-ud-08/GC.

#### **Appellant's case**

The appellant stated that the respondent was temporarily laid off on 24<sup>th</sup> February 2008 due to a severe downturn in business and that he would be taken back on when the "Clarina job came up". A week later the respondent requested his P45 and two weeks notice. It was also stated that the appellant heard through the grapevine that the respondent had commenced employment with another employer. Three other employees were kept on longer than the respondent because one was a labourer another had a driving licence and the third was a first year apprentice.

According to the appellant the company is now struck off the register of companies and is in the process of liquidation.

**Respondent's case**

The respondent stated that he received a phone call from the appellant informing him that there was no more work available for him. Other people had been laid off before him and 3-4 others remained after his lay off. He was not informed that he was entitled to a redundancy lump sum payment. When the respondent requested his P.45 he also requested payment of notice. However he was informed by the appellant that he was not entitled to notice. The respondent was informed that it was hoped that he would be taken back on when more work became available.

**Determination**

Having considered the evidence adduced the Tribunal is satisfied that the respondent was not unfairly dismissed from his employment with the appellant. In his own evidence the respondent stated that he had been temporarily laid off and not dismissed. Therefore the Tribunal overturns the recommendation of the Rights Commissioner r-069331-ud-08/GC.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

