

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

appellant

MN1507/2009

RP1708/2009

WT642/2009

Against

EMPLOYER

1st respondent

EMPLOYER

2nd respondent

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr. R. Prole
Mr N. Dowling

heard this appeal at Dublin on 1st October 2010

Representation:

Appellant(s) The appellant in person

Respondent(s): 1st named respondent – no appearance or representation
 2nd named respondent - in person

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant told the Tribunal that the first named respondent gave him a letter for the second named respondent to apply for social welfare as he was on a three-day week. He had assumed the first named respondent employed him. He had seen TH the second named respondent on a few occasions and TD (first named respondent) told him that he was working for TH. He received holiday pay for Christmas 2008 but he did not receive payment for his two weeks holidays in August 2008. He did not receive his notice pay.

Respondent's Case

There was no attendance by or on behalf of the first named respondent at the hearing.

TH on behalf of the second named respondent told the Tribunal that the appellant did not undertake work for him. He had one employee and the first named respondent was a subcontractor. TH undertook work for the first named respondent as a plumbing contractor and if he needed a carpenter he would ask the first named respondent for one. He never paid the appellant wages and he observed the appellant on one occasion on the same site as him when he undertook work for the first named respondent. His company had not traded for over a year. He could not recall sending an e-mail to the appellant on 2 July 2009. He received approximately two hundred and fifty e-mails daily. His company had not undertaken any work since February 2009.

Determination

Having heard the evidence the Tribunal find that the appellant was employed by the first named respondent and is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria: -

Date of birth	20 December 1956
Date employment commenced	15 August 1998
Date employment ceased	02 January 2009
Gross weekly pay	€708.00

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

Please note that there is a weekly ceiling of €600.00 on all awards made from the Social Insurance Fund.

The appellant is entitled to compensation of €2,832.00, which is equivalent to four weeks gross pay (€708.00 per week) under the Minimum Notice and Terms of Employment Acts, 2005 to 2007.

The Tribunal is satisfied that the appellant did not receive the holiday pay that was due to him and awards him two weeks gross pay in the amount of €1,416.00 under the Organisation of Working Time Act, 1997.

The Tribunal determine that the second named respondent is not a party to these proceedings.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

