

CORRECTING ORDER

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE
- *appellant*

RP2049/2009

against

EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr J. Killian
Ms S. Kelly

heard this appeal at Nenagh on 16th July 2010

Representation:

Appellant: In person

Respondent: Ms. Deirdre Lyons, Butler, Cunningham & Molony, Solicitors,
71 Liberty Square, Thurles, Co. Tipperary

The decision of the Tribunal was as follows:-

Determination

~~This order corrects the original Order dated 20th August 2010 and should be read in conjunction with that Order.~~

Date of commencement should read 18th August 2003 and not March 2003 as stated on the original order.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

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The decision of the Tribunal was as follows:-

Preliminary issue

The respondents raised the issue that the appellants appeal was lodged out of time. According to the T1A lodged by the appellant, his employment was terminated on the 7th March 2008 and he lodged his appeal on the 14th August 2009. The appellant gave direct sworn evidence in respect of lodging his T1A. When he was informed that his work was terminated the respondent told him that he was not entitled to redundancy. His sister mentioned redundancy to him and he in turn asked Social Welfare about it, and they told him as long as he was employed more than two years with an employer he was entitled to redundancy. He said he approached the respondent when he heard this but they told him he had the wrong information. He could not recall when this had occurred. He was not aware that other employees that were let go had received payments of redundancy. The Tribunal decided that the appeal could proceed.

Appellant's Case

The appellant explained that when he completed his apprenticeship his employer informed him that they were putting him on price and he would get paid through the office. The respondent was his employer. He would put in his price, he went to work as normal and when it rained he would go home or sit it out as normal bricklayers would. He was assisted by an apprentice during work, when it rained the apprentice would clean the house they were working on. He decided on how many blocks a day. When he ceased as an apprentice it was made clear to him that he would be going on piecework. He was not allowed to leave the site of his own accord. He finished up his apprenticeship and started on piecework the following Monday. He did not receive sick pay he knew if he did not turn up for work he would not get paid. He was informed he would have to pay admin fees when the piecework commenced. He had no written contracts with the respondent. He worked a 39-hour week. He normally took his annual leave at the same time as the builders holidays, however in 2008 he had taken two weeks leave in September and had worked through the builders holidays. He commenced work daily at 8.00 am.

Respondent's Case

The managing director gave direct sworn evidence. From 2001 to 2004 they had taken on 12 apprentices when they finished their apprenticeship they were all given the option of finishing up or going on piecework. When the first apprentice they had qualified, they paid him by piece work and deducted 35% tax from him. As a result of a Revenue audit in 2005 they were told that the piece workers either had to be on the C2 system or be paid through the PAYE system. The appellant was given the choice of a C2 or the PAYE system. Their piece workers were normally given a house to lay for 2 – 3 weeks.

Determination:

The oral evidence of the respondent and the submitted T2 paragraph five was presented in such a way that the appellant was perceived as a self-employed bricklayer. However on closer scrutiny and questions from the Tribunal the following facts emerged:

1. The appellant's hours and conditions of work did not materially change from the time he was an apprentice to the time he was engaged by the company as a bricklayer.
2. The respondent paid the appellant's PRSI and the employers PRSI and deducted pension payments in respect of the appellant.
3. Although the appellant appeared to be paid on a piecework basis he had no control over the location of his work nor was the appellant free to leave the site.
4. Supporting documents furnished by both parties and on the testimony of parties showed he had no control over the level of income he could earn from his employment

It is the unanimous view of the Tribunal that despite the anomalies in the appellant's case that in the performance of his work the appellant was under the overall control of the respondent. Accordingly the appeal under the Redundancy Payments Acts, 1967 to 2007 succeeds and the Tribunal awards the appellant a redundancy lump sum, based on the following criteria:

Date of Birth:	24 th November 1983
Date of Commencement:	March 2003
Date of Termination:	7 th March 2008
Gross Pay:	€705.33

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. A statutory weekly ceiling of €600.00 applies to payments from the Social Insurance Fund.

Sealed with the Seal of the

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This _____

(Sgd.) _____
(CHAIRMAN)

