

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
MN1583/2009
RP1815/2009

- Appellant

against
EMPLOYER

- Respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr. W. O'Carroll
Ms H. Henry

heard this appeal at Loughrea on 13th April 2010

Representation:

Appellant(s) : In Person

Respondent(s) : Geraghty & Company, Solicitors, 1 Rosemary Avenue, Eyre Square, Galway

The decision of the Tribunal was as follows:-

Appellant's Case:

The appellant gave evidence. He commenced employment with the respondent in October 2001.

In November 2008 he attended a staff meeting with his colleagues. They were informed that money was not coming in and mistakes would have to stop as the respondent had to pay for them. There was also talk of staff going on a 4-day week. On January 26th 2009 he received the letter dated December 19th 2008 concerning the implementation of short time hours of a 3-day week. It was the first time he was made aware of it. He spoke to the Foreman who knew nothing about it and told him to speak to the owner (hereafter known as SC).

SC told him there was no work and told him to take the letter to the Department of Social Welfare to claim for the days he was not working. January 26th 2009 was the last day he worked for the respondent. He continued to attend the office to get his cards signed for the Department of Social Welfare for another few months. He tried to contact SC on numerous occasions but to no avail.

In late March, early April 2009 a Supervisor in the Department of Social Welfare contacted SC asking what his status was and requesting his P45. She informed the appellant that there was no more work for him, he had been made redundant and his P45 would be posted out to him. She also

told him to contact the Citizens Information Centre and the Employment Appeals Tribunal for advice. He sent in an RP50 form to the Department of Enterprise, trade and Employment but the respondent would not sign it. He submitted a T1A form to Employment Appeals Tribunal. He got no further correspondence from the respondent.

On cross-examination he stated he had not received the letters dated November 28th 2008 or December 19th 2008 regarding a 3-day week. He stated that in SC's opinion the company was not doing well but he had not seen any financial information to back it up. He and SC had spoke about pending work and while working for the respondent the quantity of work did not reduce and wasunaware of the Menlo job.

When put to him he said he had remembered seeing a colleague in a van one day but had not driven erratically behind him flashing his lights. He had not "ranted and raved" when meeting his Foreman one day. He could not understand why SC had problems getting in contact with him after January 26th 2009. He did not apply to the respondent for redundancy.

Respondent's Case:

SC gave evidence. He had not received a written request for redundancy from the appellant. He stated he handed the letter concerning the 3-day week to all staff present at the meeting on November 28th 2008 of which the appellant was present. He also would have received the letter dated December 19th 2008 with his payslip. He asked for a copy of it on January 26th 2009. All the staff, including the appellant, were aware of the contract that was to commence in February. However due to complications between the builder and the owner this was delayed March then April and finally May 2009.

He had tried to contact the appellant on many occasions but to no avail and was unable to leave a message. He wanted to speak to him to clear up the matter concerning the incidents with his colleague and the Foreman. These people did not want to work with appellant if he was not around.

In July 2009 he wrote to the appellant to call to the office to sign an RP50 form but he never did. Having sought legal advice he was made aware the appellant was not entitled to a redundancy payment. He received a call from a person in the Department of Social Welfare who demanded the appellant's P45 immediately and a copy was faxed to her.

On cross-examination he said he had no intention to lay off the appellant. Everyone bar the Foreman and office staff were put on a 3-day week.

Determination:

The Tribunal has carefully considered the evidence submitted by both parties in this case. The Tribunal are not satisfied that the employees were properly advised of the situation and the prospect of future work. They also find that the appellant's contract of employment was terminated by the respondent by reason of redundancy. The respondent's representative submitted that Section 12 (1) of the 1967 Act applied in this appeal, however the Tribunal finds this is not the case.

Accordingly, the Tribunal determines that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on his continuous service and the following information:

Date of Birth:	27 July 1971
Date of commencement of employment:	19 October 2001
Date of termination of employment:	26 January 2009
Gross weekly pay:	€ 680.00

This award is 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.

Under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal awards the appellant the sum of € 2,720.00, this amount being equivalent to four weeks' pay at € 680.00 per week.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)