

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE

-appellant

CASE NO.
RP192/2010
MN140/2010

against

EMPLOYER

-respondent

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr M. Murphy
Mr P. Trehy

heard this appeal at Navan on 13th January 2011

Representation:

Appellant: Mr. Peter Leonard instructed by Richard Grogan & Associates, Solicitors,
16 & 17 College Green, Dublin 2

Respondent: In Person

Respondent's Case

The respondent is involved in the construction industry. In August 2009 the respondent held a staff meeting informing the appellant that business was very slow and requested they work through the builders holidays while they had work and took holidays on completion of the job. The appellant agreed to this and worked until the 6th of October 2009. The appellant was put of temporary lay-off and returned home for a couple of weeks. On the appellants return he organised to meet with therespondent and submitted the RP9, notice of intention to claim redundancy form. The respondentoffered him a few days work to which the appellant accepted. The respondent found that the appellant's attitude had changed to his work and requested he improved his behaviour. The respondent issued the counter notice to the appellant on the 27th of November; the week after theappellant gave the notice to the respondent. The counter notice allows the guaranteed work to commence within 4 weeks of the RP9 being submitted to the respondent. The following week theappellant instructed his solicitor to write to the respondent requesting the appellant be made redundant. The appellant failed to appear for work; the respondent believes this amounts to the appellant's resignation.

Appellant's Case

The appellant's employment was terminated when the respondent called him to a meeting at the end of October/early November and said 'this is your last day, I never want to see you again.' The appellant gave the RP9 form to the respondent on the 20th of November as he had been on temporary lay-off. The appellant did not receive the counter notice to the RP9, the respondent informed him that there might be work for him after Christmas, but could not guarantee it. Following a meeting on the 27th of November the respondent gave a form to the appellant; the appellant does not know what this form was. The appellant's solicitor is possibly in possession of this form.

Determination

Having heard all the evidence the Tribunal prefers the evidence of the appellant. The Tribunal does not believe a valid counter notice was given to the appellant. Section 12 of the Redundancy Payments Acts provides;

An employee shall not be entitled to redundancy payment by reason of having been laid off or kept on short-time unless—

(a) he has been laid off or kept on short-time for four or more consecutive weeks or, within a period of thirteen weeks, for a series of six or more weeks of which not more than three were consecutive, and

(b) after the expiry of the relevant period of lay-off or short-time mentioned in paragraph (a) and not later than four weeks after the cessation of the lay-off or short-time, he gives to his employer notice (in this Part referred to as a notice of intention to claim) in writing of his intention to claim redundancy payment in respect of lay-off or short-time.

Accordingly the Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria.

Date of Birth:	23 rd October 1978
Employment commenced:	7 th September 2003
Employment ended:	24 th September 2009
Gross weekly pay:	€644.28

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

Please note a ceiling of €600.00 applies to all payments from the Social Insurance Fund.

The Tribunal find that the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails as the appellant gave the RP9, notice of intention to claim redundancy to the respondent.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)