

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYER

CASE NO.  
PW184-188/2009

*appellant*

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

EMPLOYEE *first-named respondent*  
EMPLOYEE *second named respondent*  
EMPLOYEE *third named respondent*  
EMPLOYEE *fourth named respondent*  
EMPLOYEE *fifth named respondent*  
under

### PAYMENT OF WAGES ACT, 1991

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Browne  
Mr F. Dorgan

heard this appeal at Waterford on 26th November 2010

#### **Representation:**

Appellant(s) : In Person

Respondent(s) : Mr. Ger Malone, SIPTU, Connolly Hall, Summerhill, Waterford

The decision of the Tribunal was as follows:-

This case is before the Tribunal by way of an employer appealing the Decision of a Rights Commissioner, reference r-071729-pw-08 JOC, r-071734-pw-08 JOC, r-071756-pw-08 JOC, r-071739-pw-08 JOC, r-071746-pw-08-JOC.

The respondent's representative stated that four of the five named respondents appeals contained the same details. The second named respondent's case was slightly different.

#### **Appellant's Case:**

The first named respondent gave evidence. He had been working for the appellant since 1995.

During 2007 they staff were put on a 3-day week. 4 of the 5 respondents submitted RP9 forms to the employer.

On March 6<sup>th</sup> 2008 the factory premises burnt down. By letter dated March 12<sup>th</sup> all respondents were informed of the temporary lay off while the respondent tried to find alternative premises.

The second named respondent gave evidence He had not lodged an RP9 form and had remained working for the appellant until he was let go in June 2008.

### **Respondent's Case:**

The owner of the appellant company gave evidence. He stated that work had depleted in 2007 and staff were put on a 3 day week. After the fire staff were let go. However some staff remained to finish off some jobs. Eventually the work wound up and the company stopped trading. The business has since commenced again and some previously employees were rehired.

The Manager gave evidence. She stated that the respondents had not been paid their minimum notice as 4 of them had submitted RP9 forms. She said it was an oversight that the second named respondent was not paid his. She stated that her IBEC representative had dealt with the matter.

### **Determination:**

The Tribunal have carefully considered the evidence adduced and submissions lodged. As it is the case that 4 of the respondents lodged RP9 forms this precludes them from receiving a payment for their minimum notice. Part B of the RP9 form states:

*“An employee who wishes to claim a redundancy lump sum because of lay off/short time must serve notice of intention to claim in writing within four weeks after lay off/short time ceases. In order to become entitled to claim a redundancy lump sum on foot of a period of lay off, short time or a mixture of both, that period must be at least four consecutive weeks or a broken series of six weeks where all six fall within a thirteen-week period. An employee who wishes to terminate his/her contract of employment by reason of lay off or short time must give his/her employer the notice required by his/her contract or if none is required, at least one week's notice.*

***An employee who claims and receives a redundancy payment in respect of lay off or short time is deemed to have voluntarily left his/her employment and therefore not entitled to notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.”***

Accordingly the Tribunal varies the Rights Commissioners recommendation. In respect of the first, third, fourth and fifth named respondents the Tribunal sets aside the Rights Commissioners recommendation. In respect of the second named respondent the Tribunal affirms the Rights Commissioners recommendation and awards the sum of € 4,960.00 this being eight weeks gross pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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