

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
RP3100/2009
MN2445/2009

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: Ms B Glynn

Members: Mr P Pierson
Ms H Murphy

heard this appeal at Athlone on 13th December 2010

Representation:

Appellant(s): Mr Michael Scarry
Scarry O'Connor & Co, Solicitors
Po Box No 353, Unit 15, Galway Technology Park, Parkmore, Galway

Respondent(s): Mr Michael Ward
Liam Staunton & Co, Solicitors
11 Sea Road, Galway

The decision of the Tribunal was as follows:

At the outset of the hearing the Tribunal refused an application for a postponement by the respondent's representative. The respondent company was not present at the hearing.

Appellant's Case:

The appellant gave evidence that he commenced his employment as a construction worker on September 9th 2002. On May 16th 2005 the employer's name on his payslip changed to the respondent company's name. He was put on lay-off on November 28th 2008. His employer said there would be no work for a while. He was issued with an RP9 form on December 12th 2008.

In February 2009 the claimant went back to his employer with the form RP9 to seek a redundancy

payment. His employer said that he didn't have the money at that time but that he would pay him. The employer told him on two more occasions that he would pay him a redundancy payment. However, his employer said that he would only pay him in respect of the period beginning May 16th 2005. Having not received a redundancy payment the appellant lodged an appeal with the Tribunal in November 2009.

During cross-examination the respondent's representative put to the claimant that the company he stated that he had originally worked for was not registered until June 2004. The claimant maintained that he had worked for that company. He reported to the same person throughout his employment from 2002. His work and pay remained the same when the name changed on his payslip.

Determination:

The Tribunal finds that the appellant's appeal for redundancy succeeds as from November 28th 2008 the respondent had no further work for the appellant. Furthermore, the Tribunal finds that the length of service of the appellant in determining the monies due to him are to be calculated from September 9th 2002 as while the appellant was not working for the respondent company at the time, it is clear from the evidence adduced that the appellant was part of a transfer of undertakings between the respondent company and the former employer of the appellant.

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

Date of Birth:	16 th March 1979
Date of Commencement:	9 th September 2002
Last day worked:	28 th November 2008
Date of Termination:	15 th February 2009
Weekly Gross Pay:	€600.00

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

As the employee terminated his employment by serving part b of the RP9 form in February 2009 the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)