

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**  
EMPLOYEE – *claimant*

**CASE NO.**  
MN1995/2009

against

EMPLOYER - *respondent*

under

### MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr R. Murphy  
Mr F. Keoghan

heard this claim at Dublin on 26th November 2010

#### Representation:

Claimants: Mr. James Coughlan, Siptu, Irish National Painters &, Decorators Trade Group,  
Liberty Hall, Dublin 1

Respondent: Mr. Peter Dempsey, Dempsey, Solicitors, Suite 107, The Capel Building, Mary's  
Abbey, Dublin 7

The decision of the Tribunal was as follows:

#### **Claimant's Case**

The claimant gave direct sworn evidence; he commenced employment with the respondent in 1995 as a painter. On the 6<sup>th</sup> July 2010 he was requested to attend a meeting where he along with two other of his colleagues were informed that their employment was to end on Friday 10<sup>th</sup> July 2010 with one weeks pay. He was informed later he would also receive his holiday pay. On the 8<sup>th</sup> July 2010 he was approached by the respondent and asked to continue on working in Tyrellstown, which he did up until 17<sup>th</sup> July after which he was on two weeks holidays. On Friday 31<sup>st</sup> July the respondent telephoned him and told him he had no more work for him and he would have to let him go. He asked the respondent on the 4<sup>th</sup> August 2010 about his notice pay, the respondent told him he would receive this when the cheque came in on the RP50. The date of termination on his RP50 was 31<sup>st</sup> July 2010.

### **Respondent's Case**

A financial consultant gave evidence on behalf of the respondent. She was brought in by the respondent to assist in debt collection and credit control. She along with the respondent met with their remaining three employees, including the claimant on the 6<sup>th</sup> July 2010. They advised the claimant that they would have no work for them after the builders' holidays that were to run from the 17<sup>th</sup> July to the 31<sup>st</sup> July 2010. They accepted that the notice period they gave to the claimant was wrong, but two weeks were given to him this included the builders' holidays, so on this basis he is due four weeks. She denied that the claimant had been told that his job would terminate on the 10<sup>th</sup> July 2010. They had told them formally on the 6<sup>th</sup> July 2010 that their positions would terminate on the 31<sup>st</sup> July 2010 after the builders holidays. The claimant had no written contract while employed by the respondent.

### **Determination**

We accept the earnestness of both parties but in the circumstances where the employer is terminating the relationship and is in a position of strength there is an onus on them to ensure clarity. Given the fact the employer admitted that they did not give the claimant terms of employment and information that they were required to do, if such information had been provided it would have highlighted the procedure to be adopted on termination. The Tribunal finds it must prefer the evidence of the claimant. Accordingly the Tribunal awards the claimant €5,189.40 being the equivalent of six weeks 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)