

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE

*-Appellant*

CASE NO.  
RP1347/2010

MN947/2010  
WT402/2010

against  
EMPLOYER

*- Respondent*

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms D. Donovan B.L.

Members: Mr J. Hennessy  
Ms S. Kelly

heard this appeal at Waterford on 15th April 2011

#### **Representation:**

Appellant: Ms. Geraldine Malone, Branch Official, SIPTU, Connolly Hall,  
Summerhill, Waterford

Respondent: Operations Manager

#### **The decision of the Tribunal was as follows:**

A main client informed the respondent company (which is a security firm) on Wednesday, 24<sup>th</sup> February 2010 that it was reducing its contracted hours from Friday, 26<sup>th</sup> 2010. On 25<sup>th</sup> February 2010 the Operations Manager spoke with a number of employees, including the appellant, to inform them that due to the reduction in hours, no further work was available to them. The appellant was provided with a letter dated 24<sup>th</sup> February 2010 to this effect.

The Operations Manager did not have an immediate offer of work to make to the appellant but he told the appellant that he could examine the possibility of alternative work within the company. The appellant said he would have to secure social welfare benefits and requested a P45. As the appellant had requested a P45, the Operations Manager believed the appellant to have terminated his own employment. The appellant signed a termination form, which stated that he was requesting his P45, as the contracted hours on site were finished. The appellant's employment terminated on 26<sup>th</sup> February 2010.

Twelve other employees were also informed that there was no further work for them at that time. In the following four weeks, seven employees were brought back to work with the company when alternative work was secured. The Operations Manager believed he had contacted the appellant at some time with an offer of work but the appellant refuted this.

It was the appellant's case that he was entitled to payment for public holidays since the commencement of his employment with the respondent. The Operations Manager gave evidence that employees did not work public holidays and therefore were not paid for them. He conceded that the appellant was not paid in lieu of minimum notice.

**Determination:**

It is clear from the evidence of both sides that there was a reduction in work. The Tribunal does not find a request for a P45 to be conclusive in finding whether or not an employee tendered their resignation. In the circumstances of this case the Tribunal is satisfied that the appellant solely requested his P45 to secure social welfare benefits. It is clear from the termination form signed by the appellant that had an offer of alternative work transpired, then the appellant could have returned to work in that instance. However, the Tribunal is satisfied that no offer of alternative work was made to the appellant. In such circumstances the Tribunal is satisfied that his position within the company was made redundant. 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:        | 6 <sup>th</sup> April 1968     |
| Date of Commencement: | 8 <sup>th</sup> October 2007   |
| Date of Termination:  | 26 <sup>th</sup> February 2010 |
| Gross Weekly Pay:     | €297.80                        |

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

The Tribunal is satisfied that the appellant is entitled to the sum of €536.04 (being the equivalent of nine days gross pay) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The Tribunal finds that the appellant has an outstanding entitlement of €595.60 (being the equivalent of ten days gross pay) as payment for public holidays in the preceding eighteen-month period (prior to his termination) as per the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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