

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE -*appellant*

CASE NO.  
MN258/2009  
RP235/2009

against  
EMPLOYER - *respondent*

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mrs. M. Quinlan  
Members: Mr R. Murphy  
Mr. S. O'Donnell

heard this appeal at Dublin on 22nd October 2010  
and 15<sup>th</sup> April 2011

Representation:

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

Respondent(s) : In Person

### Summary of Evidence

The appellant was employed as a construction worker by the respondent from July 2006 until December 2008. He received €680 per week. In December 2008 he was working for the respondent in Douglas Shopping Centre, Cork. (NS) from the company arrived on site circa 18/19 December 2008 and told him that he was being dismissed. He was given his payslip, final pay packet and his P45 on that day. He was also given a letter dated 18 December 2008 explaining that the reason for his dismissal was due to a downturn in business and thanking him for his time with the company. The letter was on headed paper from (CMcL) in the company but was not signed. He returned to his native country following his dismissal. He is now working in the UK having commenced employment there in May 2010. He receives £350 approx per week.

(NS) for the respondent told the Tribunal that the appellant requested his P45 in December 2008. He returned to his native country voluntarily in December 2008 and was not dismissed by the

respondent company. The respondent company had work for him until at least mid June 2009. The witness told the Tribunal that he gave the appellant his P45, his final cheque and payslip. These documents were in a sealed envelope and were prepared by the wages person. He was not given the aforementioned letter dated 18 December 2008 and the company have no knowledge as to how this letter came to exist. In Autumn 2008 the company had approximately 40 employees and currently employs approximately the same number. It has never made any employees redundant.

(CMcL) gave evidence that the letter of 18 December 2008 was not produced by him. He has no record of issuing that letter and it does not bear his signature. He told the Tribunal that all letters issued by him contain his signature. (MMcS) gave evidence that that she was requested by (NS) to provide the appellant's final payslip, cheque and P45 as the appellant was leaving his employment. She did so and gave them in an envelope to (NS). The aforementioned letter of 18 December 2008 was not included in the envelope.

### **Determination**

The Tribunal carefully considered the evidence adduced by both parties. There was a clear conflict of evidence between the parties in particular regarding the source and existence of the letter of 18 December 2008 which gave notice to the appellant. On balance the Tribunal is unanimously of the view that the appellant was dismissed by the respondent and accordingly 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:	18 May 1980
Date of commencement of employment:	10 July 2006
Date of termination of employment:	18 December 2008
Gross weekly pay:	€680.16

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

The Tribunal also awards the appellant the sum of €1360.32 being the equivalent of two weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Please note that a weekly ceiling of €600 applies to all awards made from the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

