

## EMPLOYMENT APPEALS TRIBUNAL

### APPEAL OF:

EMPLOYEE

,  
- appellant

### CASE NO.

MN1016/10  
RP1448/10

### 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: Ms D. Donovan BL

Members: Mr T. O'Grady  
Mr N. Dowling

heard this appeal at Naas on 6th May 2011.

### Representation:

Appellant: In person

Respondent: ESA Consultants, The Novum Building, Clonshaugh Industrial  
Estate, Dublin 17

The decision of the Tribunal was as follows:-

At the outset of the hearing the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn.

### Appellant's Case:

The appellant commenced employment on 21<sup>st</sup> June 2007. He was employed as a General Operative. He worked at all times at the respondent's premises and carried out the same duties under the control and direction of the respondent until his employment was terminated by reason of redundancy on 10<sup>th</sup> March 2010. He gross weekly wage was €346.00.

### Respondent's Case:

The respondent engaged the services of a recruitment agency to recruit staff. The appellant was a valued employee of the company and worked at the respondent's premises. Initially,

the recruitment agency paid his wages and holiday pay and in turn invoiced the respondent for the claimant's time.

The respondent agreed to hire the appellant directly on 31<sup>st</sup> March 2008. As a result the appellant's employment ended with the recruitment agency on 3<sup>rd</sup> April 2008 and he was issued with a P45. A contract of employment was drawn up. This contract of employment was signed on 22<sup>nd</sup> August 2008. Due to a downturn in business the respondent had to terminate the appellant's employment on 10<sup>th</sup> March 2010 and he was made redundant. The respondent contended that the appellant did not have the requisite two years to qualify for a redundancy payment as it was the respondent's contention that the appellant only commenced employment with the respondent on 31<sup>st</sup> March 2008.

The respondent contended that you could not merge two contracts of employment.

**Determination:**

Having carefully considered the evidence adduced at the hearing the Tribunal determines that the appellant's employment with the respondent commenced on 21<sup>st</sup> June 2007. In the circumstances the appellant's claim under the Redundancy Payments Acts 1967 to 2007 succeeds.

The Tribunal awards the appellant a redundancy payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of Birth:	6 <sup>th</sup> November 1956
Date of Commencement:	21 <sup>st</sup> June 2007
Date of Termination:	10 <sup>th</sup> March 2010
Gross Weekly Wage:	€346.00

This award is made subject to the appellant having been in employment, which is insurable for all purposes under the Social Welfare Consolidation Act 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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