

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE -*Appellant*

CASE NO.
RP816/2010
MN542/2010

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: Mr N. Russell

Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Carlow on 3rd May 2011

Representation:

Appellant: Mr. William Fleming, William Fleming & Partners,
Solicitors, Belmont House, Belmont, Kilkenny Road, Carlow

Respondent: A director of the company.

The decision of the Tribunal was as follows:

A director of the company gave evidence that the appellant was injured at work on 11th August 2008 and subsequently brought a personal injuries claim against the company. From the time this claim was brought there was no further contact from the appellant. The director stated that a P45 had issued to the appellant in August 2008. The company did not receive medical certificates from the appellant. The first direct contact with the appellant was in January 2010 when the appellant telephoned to inform the company that he was returning to work.

Following from this telephone call the company wrote a letter dated 28th January 2010 to the appellant enclosing a copy of P45, which had issued on the termination of the appellant's employment on 22nd August 2008. The director thought the appellant had changed address at that time and perhaps for that reason had not received the P45. The director did not believe that the appellant was entitled to a minimum notice payment as he had terminated his own employment.

During cross-examination the director stated that he was unaware if the appellant had been told by an employee of the company that he should submit his medical certificates to the social welfare office in order to receive illness benefit.

The appellant gave evidence that during the three weeks after his release from hospital he telephoned the company on a number of occasions but did not receive any information. Eventually during his last telephone call to the company, an office employee informed the appellant that from then on he should submit his medical certificates to the social welfare office in order to receive illness benefit. His last payment from the company was three weeks after the accident. At that time his address was unchanged. He did not receive a P45 from the company in August 2008.

From then on the appellant submitted the medical certificates to the social welfare office as instructed by the company. He received illness benefit payments until he was fit to resume work. The appellant was subsequently certified fit to return to work and he telephoned the company to inform them of this at the end of January 2010. The appellant was informed that there was no work available and that the company had closed. The director told the appellant that a P45 should have issued to him but the appellant informed him he had not received this document. When he received a copy of the P45 in January 2010 it showed a date of termination of 22nd August 2008

Determination:

The Tribunal is satisfied on the balance of the evidence that the appellant did not receive a P45 in August 2008. The Tribunal further accepts the evidence of the appellant that he was instructed by an employee of the company to submit his medical certificates to the relevant authority in order to receive illness benefit during his absence from work.

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:	22 nd June 1985
Date of Commencement:	23 rd January 2006
Period of Non-Reckonable Service:	11 th August 2009 to 27 th January 2010*
Date of Termination:	27 th January 2010
Gross Weekly 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.

The Tribunal also finds that the appellant is entitled to the sum of €1,200.00 (being the equivalent of two weeks' gross pay) under the Minimum Notice and Terms of Employments Acts, 1973 to 2005.

*The first 52 weeks are fully reckonable in cases where an absence in excess of 52 consecutive weeks was caused by an occupational accident.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)