

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

-Appellant A

CASE NO.
RP903/2010
MN610/2010

EMPLOYEE

-Appellant B

RP904/2010
MN611/2010

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 J. Revington S.C.

Members: Mr. B. Kealy
Mr F. Keoghan

heard this appeal at Dublin on 14th October 2010 and 23rd August 2011

Representation:

Appellants: Ms. Barbara Mebtouche, TRIANA, Independent Advice & Information Bureau,
13 Store Street, Dublin 1

Respondent: There was no appearance by the respondent on either date.

The decision of the Tribunal was as follows:

This case was heard simultaneously with RP226/2010.

At the hearing on 14 October 2010, a representative for another respondent named on form T1A, stated that it was her belief that both appellants may not have the requisite service of 104 weeks as stipulated by the Redundancy Payments Acts, 1967 to 2007. The representative refuted that a transfer of undertakings had occurred on a number of occasions.

It was the appellants' case that they had the requisite service required to qualify for a redundancy payment by virtue of a series of transfer of undertakings.

Appellant A gave evidence with the assistance of a Tribunal appointed interpreter that his employment initially commenced on 10th May 2006. He did not receive a P45 during the duration

of his employment. Initially he was paid monthly but in or around August 2008 he was paid on a weekly basis and the method of payment varied throughout the employment. In reply to questions from the Tribunal, Appellant A stated that any change in the identity of his employer was not discussed with him and there was no change to the practical terms of his work. Appellant A received instructions from the same people throughout the duration of his employment, he was paid by the same person and he was unaware of any change in the identity of his employer. A number of documents in relation to Appellant A's employment were opened to the Tribunal.

Appellant B gave evidence with the assistance of a Tribunal appointed interpreter that his employment commenced in September 2007 and the last day he worked was the 3rd November 2009 when the supervisor informed him that there was no further work. A number of documents in relation to Appellant B's employment were also opened to the Tribunal.

After Appellant B gave evidence the hearing on the 14 October 2010 was adjourned. The Tribunal requested certain documentation for the next hearing date.

There was no appearance by or on behalf of the above-named respondent at the hearing on the 23rd August 2011.

Appellant A claimed that his employment, which commenced on 10th May 2006, ended by reason of redundancy on 27th November 2009. His gross weekly pay was €752.27.

Appellant B claimed that his employment, which commenced on 26th September 2007, ended by reason of redundancy on 27th November 2009. His gross weekly pay was €658.20.

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, were not prosecuted at the hearing on 23rd August 2011.

In sworn testimony to the Tribunal on 23rd August 2011 the appellants' representative stated that she had spoken to the respondent's company secretary about a month earlier when the representative had received notification of the 23rd August 2011 hearing, that the secretary had confirmed that she was aware of the hearing, had said that there was a social insurance fund and had sent blank redundancy forms.

Determination:

The claims under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, fall for want of prosecution.

The Tribunal heard evidence from the appellants' representative who indicated under oath that she had spoken to the secretary of the respondent company and that the said secretary had been aware of the date of the 23rd August 2011 hearing.

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that Appellant A is entitled to a redundancy lump sum based on the following details:

Date of birth:	4 November 1977
Date of commencement:	10 May 2006
Date of termination:	27 November 2009

Gross weekly pay: €752.27

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that Appellant B is entitled to a redundancy lump sum based on the following details:

Date of birth: 29 August 1983
Date of commencement: 26 September 2007
Date of termination: 27 November 2009
Gross weekly pay: €658.20

Note:

Payments from the Social Insurance Fund are limited to a maximum of €600.00 per week.

These awards are made subject to the appellants having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)