

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

EMPLOYEE

- appellant

against

EMPLOYER

- respondent

under

CASE NO.

MN1772/2010

RP2435/2010

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: Mr. P. O'Leary B L

Members: Mr. A. O'Mara
Mr O. Nulty

heard this appeal at Monaghan on 1st September 2011
and 28th November 2011

Representation:

Appellant(s) : Mr. Richard Grogan, Richard Grogan & Associates, Solicitors,
16 & 17 College Green, Dublin 2

Respondent(s) : In Person

The decision of the Tribunal was as follows:-

Respondent's Case:

The appellant had been employed as a rigid truck driver. In June 2009 all staff were put on protective notice of temporary or permanent lay-offs together with a reduction in wages. In October 2009 the appellant was sent a letter informing him of the short-term arrangements to be put in place – a week on week off working basis.

The appellant continued to work until May 7th 2010. He submitted an RP9 form on July 15th 2009 but the respondent did not submit the legally required counter notice. Correspondence crossed between the respondent, their accountant and the appellant's solicitor. The respondent and his accountant submitted that the appellant had been made redundant but there was an inability to pay due to financial difficulties.

Determination:

The Tribunal have carefully considered the sworn evidence and submissions adduced over the two days in this case.

The appellant submitted an RP9 form on July 15th 2009 of his notice of his intention to claim a redundancy payment in a Lay Off / Short Time situation. Part C of the RP9 form is for the respondent to complete as a counter notice to the employee's intention to claim a redundancy payment. It states:

PART C

Counter Notice to Employee's Notice of Intention to claim a Redundancy Lump Sum

Notification in respect of this part must be in writing and must be given to the employee within seven days of service of the employee's notice.

I contest any liability to pay you a Redundancy Lump Sum on the grounds that it is reasonable to expect that within four weeks of the date of service of your notice, namely,
(date of service)

you will enter upon a period of employment of not less than thirteen weeks during which you will not be on lay off or short time any week.

Signature of Employer _____ *Date:* _____ "

The representative for the respondent admitted the respondent had not complied with this notice which is a mandatory provision.

Having heard the evidence and submissions adduced by both parties in this case to the Tribunal finds that the appellant was made redundant.

Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 succeeds and the Tribunal awards the appellant a redundancy lump sum, which is to be calculated on the basis of the following criteria:

Date of Birth:	07 February 1981
Date of Commencement:	23 June 2006
Date of Notice Given:	07 May 2010
Date of Termination:	07 May 2010
Gross Pay:	€ 508.00

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

Two breaks of reckonable breaks in service occurred during the appellant's employment as set out below:

Break 1: 27 June 2009 to 21 August 2009 – Career Break

Break 2: 12 April 2010 to 16 April 2010 – Career Break

There were twelve other breaks in service but these were non-reckonable.

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

