

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE
- *Appellant*

CASE NO.
UD458/2010
MN421/2010
RP651/2010

Against

EMPLOYER - *Respondent*

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. Clancy

Members: Mr T. Gill
Mr T. Gill

heard this claim at Galway on 10th November 2011

Representation:

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

Respondent(s) : Feeney, Solicitors, 1st Floor, Lismoyle House, Merchants Road, Galway

Preliminary Issue:

A preliminary issue regarding the rate of pay applicable to the appellant was raised by the appellant's representative. The Tribunal were informed that he is waiting on a decision of the Labour Court to determine if the pay rate he is entitled to is that set out in the Registered Employment Agreement for construction workers.

Appellant's Case:

The appellant gave evidence of commencing employment in May 2007 as a construction worker. In August 2009 he was told there was no more work at the site where he had been working. He waited for three weeks and when no job came up he went to Department of Social Protection and was informed he required his P45. He confirmed to the Tribunal that he got no lay off notification or documentation and that he did not resign.

In cross examination he told the Tribunal that he worked for the respondent at sites in Castlebar, Limerick and Renmore, Galway. He said he was told there was no more work and was never offered work at other sites. He checked with the respondent every three days if there was any

work.

Respondent's case:

The respondent told the Tribunal that he was a subcontractor for over six years. He had three employees. When work finished on the site where the appellant was based he made a number of calls to obtain work elsewhere for the appellant and continued to do so. He contacted the appellant on a regular basis during that period and offered the appellant a job in Westport but the appellant said it was too far to travel. He could not pay any travel expenses. The sub contract work the respondent had with a construction company ended 18 months ago and he said he is owed €43,000.

In cross examination the respondent could not give exact details of the job in Westport and referred to it as a small snagging job. He said the appellant resigned from his job. In September 2009 he said he then had two employees and did not replace the appellant.

Determination:

The Tribunal heard evidence from the appellant and the respondent in this case. Having considered the evidence the Tribunal found that a redundancy situation existed.

The Tribunal are satisfied that the appellant is covered by the Registered Employment Agreement for the construction industry and award the appellant a lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of Birth :	18 March 1984
Date of Commencement:	May 2007
Date of Termination:	31 August 2009
Gross Weekly Pay:	€580.32

Please note that a weekly ceiling of €600 applies to all awards made from the Social Insurance fund. This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

There was no evidence adduced in relation to the claim under the Unfair Dismissals Acts, 1977 to 2007 or the Minimum Notice and Terms of Employment Acts, 1973 to 2005 therefore the Tribunal dismiss the claims for want of prosecution.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)