

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE

RP3268/2010
MN2372/2010

against

EMPLOYER

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: Mr. D. Mac Carthy S C
Members: Mr. D. Winston
Mr F. Keoghan

heard this appeal at Dublin on 23rd February 2012

Representation:

Appellant: The appellant in person

Respondent: Mr. Michael Leahy, RBH Project Management Ltd,
17 Charnwood Park, Clonsilla, Dublin 15

Appellant's case

The appellant withdrew his appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

It was common case that the appellant was made redundant on 27th August 2010 and that his gross weekly wage, prior to being placed on a 3 day week, was €457.15. During the period of "reduced hours" the appellant constantly asked to be put back on a five day week but was told that there was not enough work available. The appellant stated that he commenced employment with the respondent on 19th September 1999. In November 2006 the appellant was told that the contract he was engaged under was transferred to another employee who had set up as a sub-contractor. However the appellant's terms and conditions of employment remained the same and he continued to drive the truck bearing the name of the respondent and doing the same work as he had done with the respondent. Subsequently there was a "falling out" between the respondent and the operator of that contract and the appellant and others were taken back by the respondent.

The appellant argued that there was a transfer of undertakings and that he was entitled to a redundancy lump sum based on the commencement date of 19th September 1999.

Respondent's case

The witness for the respondent did not dispute any of the evidence given by the appellant. However he did dispute that there was a transfer of undertakings as the appellant had been removed from the respondent's payroll for the duration of his employment with the other company.

Determination

Having considered the evidence adduced the Tribunal is satisfied that the appellant was continuously employed, through a period of sub-contracting, since 19th September 1999 and that he is entitled to the protection of the European Communities (Protection Of Employees On Transfer Of Undertakings) Regulations 2003.

Therefore the Tribunal awards the appellant €10,468.74 based on the following criteria.

DOB	2 nd March 1976
Commencement Date	19 th September 1999
Date notice received	13 th August 2010
Termination date	27 th August 2010
Gross pay	€457.15

This award is made subject to the claimant having been in insurable employment, during the relevant period, in accordance with the Social Welfare Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)