

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
MN1194/2011, WT449/2011

against

EMPLOYER

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T O'Mahony B.L.

Members: Ms M. Sweeney
Mr J. Flavin

heard this claim at Cork on 12th July 2012

Representation:

Appellant : Ms Colleen Minihane, SIPTU, Connolly Hall, Lapp's Quay, Cork

Respondent : Ms Una O' Donovan B L instructed by
Stokes & Co., Solicitors, 20 Grand Parade, Cork.

The decision of the Tribunal was as follows:

Respondent's Case

The managing director of this long established bakery concluded by early June 2010 that the business "was finished". It was his intention to place the company into voluntary liquidation and then sell it to identified investors. In that context the staff including the appellant was informed that their current employment was to be terminated without notice and that all statutory payments including redundancy, notice and holiday pay would be paid to them.

Neither a liquidation nor a new entity emerged as the plans for the bakery unravelled by the end of that month. The respondent continued to trade, albeit without some of its pre -June employees. The managing director told the Tribunal that he understood that all notice and holidays payments are covered as part of a redundancy package. He also told the appellant and his colleagues that his payments for notice and holidays would be paid within nine months from his date of termination. Statutory redundancy was paid to the appellant from the Social Insurance Fund in early 2011.

It was the respondent's contention that the appeal under the Organisation of Working Time Act, 1997 was out of time.

Appellant's Case

The appellant confirmed that he was told that his payments for notice and holidays would be discharged by the autumn of 2010. He added that he is still waiting for those payments and did not apply sooner for the holiday payments as he believed that it would be forthcoming by then. When it became clear that this was not the case he then submitted an application for both notice and holiday payments in May 2011. Having heard the circumstances of this case the Tribunal extended the time allowed for the appellant to take a case under that Act and took jurisdiction of that case.

Determination

In accepting that there was a genuine belief by the appellant that his holiday payment would be discharged within a reasonable time of the termination of his employment the Tribunal extends the time for an appeal under the Organisation of Working Time Act, 1997 and allows that appeal to succeed. Accordingly, the appellant is awarded €1,070.25 under that Act being the equivalent of 15 days payment in lieu of that leave.

The appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also succeeds and the appellant is awarded €2,854.00 under those Acts being the equivalent of eight weeks' pay in lieu of notice.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

