

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:

CASE NO.

EMPLOYEE

*appellant*

RP1347/2011

MN1122/2011

WT403/2011

against

EMPLOYER

*respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr D. Moore  
Mr G. Whyte

heard this appeal at Dublin on 21st August 2012

Representation:

Appellant(s): Ms. Lucinda Shaw, Michael Nugent & Co, Solicitors, 6 Sandford Road,  
Ranelagh, Dublin 6

Respondent(s): Mr. Nigel Swan, Swan & O'Sullivan, Auditors & Accountants,  
177 Lower Rathmines Road, Rathmines, Dublin 6

The decision of the Tribunal was as follows:-

**Respondent's Case**

TO'R, director told the Tribunal that the appellant gave him verbal notice on the 4<sup>th</sup> October 2010 that he was leaving the respondent at the end of October 2010. He told him he was setting up a company. He tried to convince the appellant to remain on but he wanted to set up on his own. The appellant gave notice to the other director FOR. The respondent had a replacement engineer PB in place on the 15<sup>th</sup> October 2010 and he was due to commence on

the 15<sup>th</sup> November 2010 but he did not start. PB confirmed in writing that he would start. The respondent ceased trading on the 29<sup>th</sup> October 2010. The respondent had a cash flow problem over a number of months.

In cross examination he stated that the respondent had no difficulty in paying wages but it had a problem collecting cash. He could not recall a fuel card being cancelled in May 2010. If the appellant asked to be reimbursed he was. Payments to suppliers were delayed in certain cases. The appellant suggested that he would set up a company and continue to work for the respondent. He had no idea when the appellant started trading. The liquidator asked him to obtain information from all employees which he did by e mail.

In answer to questions from the Tribunal he stated that PB was recommended by a friend and this was done verbally. The appellant's resignation was verbal. A P45 was not completed for the employee. Employees had contracts but he was unable to locate contracts for some of the employees.

### **Appellant's Case**

The appellant told the Tribunal that in March 2003 he commenced employment as an IT manager. He was responsible for the hardware and was the only person responsible for IT. He did not hand in his notice at any time. In February 2010 he was aware that certain suppliers were not getting paid. He got paid by direct debit and then by cheque at the end of the month.

He had the use of a fuel card from the respondent and this bounced in early 2010, this was very embarrassing. He had no money on him and he returned to the garage that afternoon to pay for the fuel. He paid a subscription renewal to an IT provider as he knew that clients were relying on the respondent for business and he did not want calls that the website was down as that was a core of the respondent's business.

In early September 2010 he had a meeting with the directors TOR and FOR. They asked him to work as a subcontractor. He knew the respondent was in financial difficulty. If he was going to leave the respondent he would want to work for himself. That was the end of the conversation but it made no financial sense. The appellant had two options, either work for himself or go and get a job. He registered his company in early October 2010 and he did not think that matters would have happened the way they did.

On the 29<sup>th</sup> October 2010 he was called to the office and was informed by the directors that the respondent could not pay wages or expenses. He was informed that the respondent was being liquidated. He had accrued expenses and he lost that money. The directors tried to force him to hand in his notice. He started trading in November 2010. He received an e mail from the director TOR on the 20<sup>th</sup> December 2010 in which he was asked for his date of birth so that his wages and redundancy claim could be calculated. He sent a subsequent e mail to FOR in January 2011 whereby he wished him a Happy New Year and he informed him that he had not received his RP50 form.

In cross examination he stated that as suppliers were not getting paid he had to do something. He had to protect his own family and income and he had concerns about the respondent. He would rather pay an invoice to a supplier than have no job. He expected to get paid at the end

In answer to questions from the Tribunal he stated that he started trading in November 2010.

Four employees were made redundant and were paid their redundancy. They had been working with the respondent for two to five years. He had no idea why there was an issue with paying him his redundancy. He organised the hardware side of the business. The meeting that took place with the directors was in relation to him working as a subcontractor.

### **Determination**

As the appellant's employment ended without notice he is entitled to compensation in lieu of notice in the amount of €4,195.44 which is equivalent to four weeks gross pay (€1,048.87 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005

It was agreed by both parties that the appellant is entitled to seven days holiday pay under the Organisation of Working Time Act, 1997 and the Tribunal awards compensation of €1,468.42.

Based on the evidence adduced the Tribunal finds that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of birth	2 <sup>nd</sup> September 1969
Date employment commenced	24 <sup>th</sup> March 2003
Date employment ceased	29 <sup>th</sup> October 2010
Gross weekly pay	€1,048.87

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

There is a weekly ceiling of €600.00 on all awards made from the Social Insurance Fund.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

