

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE *-appellant*

CASE NO.
UD2310/2010
WT262/2012

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER *-respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Lucey

Members: Mr G. Andrews
Mr O. Wills

heard this appeal at Tralee on 31st July 2012

Representation:

Appellant: Joanne Williams B.L. instructed by
Daly, Foran & Associates, Solicitors, 23 Rock Street, Tralee, Co Kerry

Respondent: No appearance or representation on behalf of the respondent

This determination should be read in conjunction with **RP650/2012** where the appellant is making a claim under the Redundancy Payments Acts 1967 to 2007 and the Minimum Notice and Terms of Employment Acts 1973 to 2005.

This case came before the Tribunal by way of an employee appeal of the Rights Commissioner Recommendation **ref:080586-ud-09/pob** under the Unfair Dismissals Acts 1977 to 2007 and the Rights Commissioner Decision **ref: r-080587-wt-09/pob** under the Organisation of Working Time Act 1997.

Appellant's Case

The appellant worked for the respondent as a construction operative. The respondent engaged in all types of construction work. The appellant was last paid on the 6th of February 2009. The respondent owner said 'see you on Monday' as normal. On Monday morning the appellant went to the normal location to be picked up for work but the respondent did not appear that day or the next day. The appellant called to the respondent's house but was told by his wife that he was not there. The appellant tried to phone the respondent but there was no answer. Up until

thatpoint work had been very slow. As there was no work available the appellant hadn't started work after the Christmas break until the 19th of January. There had been very little work upuntil December before the Christmas break. The appellant gave evidence that he was not paidfor his annual leave entitlement.

Determination

The Tribunal are satisfied that the respondent was properly on notice of this hearing. Having carefully considered the uncontested evidence of the appellant, the Tribunal find that the appellant was dismissed by reason of redundancy. Consequently the Tribunal upholds the Rights Commissioner Recommendation **ref:080586-ud-09/pob** that the claim under the Unfair Dismissals Acts 1977 to 2007 fails.

The Tribunal upset the Rights Commissioner Decision **ref: r-080587-wt-09/pob** under the Organisation of Working Time Act 1997. The appellant is awarded €2880.00 being the equivalent to payment for 6 weeks' annual leave.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)