

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE
- *Appellant*

CASE NO.
RP1530/2011
WT477/2011
MN1263/2011

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. E. Coughlan

Members: Mr P. Pierce
Mr A. Butler

heard this appeal at Wicklow on 10th July 2012

Representation:

Appellant: In person

Respondent: In person

The decision of the Tribunal was as follows:-

The appellant told the Tribunal that he commenced working for the respondent on 22nd July 2004. His gross pay was €642. The respondent company closed and ceased trading on 24th December 2010 while the appellant was on sick leave. The appellant was absent from work due to sick leave from 15th December 2008. His absence was due to an occupational injury.

The appellant sought payment in respect of holidays and public holidays accrued during his absence on sick leave from the respondent company in accordance with a ruling on a separate case from the European Court of Justice.

The respondent confirmed that the company ceased trading from 24th December 2010 and the appellant did not receive his minimum notice entitlement.

Determination

The Tribunal finds that the appellant was dismissed by reason of redundancy and is entitled to a lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following criteria:

Date of Birth: 11th March 1944
Date of Commencement: 22nd July 2004
Date of Termination: 24th December 2010
Gross Pay: €642

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

The Tribunal awards the appellant €2,568, being the equivalent to four weeks pay, under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

It should be noted that payments from the Social Insurance Fund are subject to a ceiling of €600 per week.

In respect of the appellant's claim for outstanding holidays the Tribunal finds that an employee's entitlement to annual leave is based on hours actually worked as per the Organisation of Working Time Act 1997. Until this legislation is amended the ECJ ruling that an employee can accrue annual leave while on sick leave is not enforceable by employees in the private sector. Accordingly, the Tribunal dismisses the claim under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)