

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
RP3004/2010
MN2173/2010

against

EMPLOYER

Under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

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

Members: Mr D. Hegarty
Mr O. Wills

heard this appeal at Cork on 30th April 2012

Representation:

Appellant: Mr Billy Kyne, Regional Organiser, Unite The Union, Keyser Street, Waterford

Respondent : REP

The decision of the Tribunal was as follows:

The respondent is a registered trade union with a negotiating licence. It has its headquarters in Dublin and a number of branches throughout the country. The appellant commenced employment as an official in May 2005 in a local branch. As and from 12 March 2010 the appellant was put on temporary lay-off due to the serious financial situation in which the respondent found itself because of the sharp downturn in the construction industry and he was furnished with Form RP9.

Some time prior to this a dispute had developed within the respondent trade union. In February 2010 the local branch registered itself as a separate employer with the Revenue Commissioners and got its own employer number. The local branch employed the appellant and paid him out of local branch funds. There was a dispute as to when the appellant commenced employment with the local branch. He continued to work for the local branch until August 2010. On 20 May 2010 the respondent's Acting General Secretary wrote to the appellant informing him that he was still an employee of the respondent, that he was to remain on lay-off and that his failure to comply with this instruction "will be considered an act of gross misconduct and could lead to your dismissal".

On 2 July 2010 the appellant completed part B of Form RP9 and submitted it to the respondent seeking a redundancy lump sum payment. The respondent did not serve a counter notice on the appellant within seven days of receiving Form RPR.

The General Secretary (the former Acting General Secretary) maintained that it would not be proper practice to declare the appellant redundant, accept the rebate and at the same time fund his continuing employment in one of its branches. .

Determination

An internal dispute had arisen within the respondent trade union and the local branch became a registered employer with its own employer number. The respondent had put the appellant on temporary lay-off from 12 March 2010 and issued him with an RP9 form. On 20 May 2010 the respondent's Acting General Secretary wrote to the appellant informing him *inter alia* that he was still an employee of the respondent. On 2 July 2010 the appellant completed part B of the RP9 form and submitted it to the respondent. As the respondent did not serve the appellant with a counter notice within seven days of receiving his claim for redundancy the Tribunal awards him a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following:

Date of Birth: 12 September 1952
Date of Commencement: 16 May 2005
Date of Termination: 12 July 2010
Non-Reckonable Service: 12 March 2010 to 12 July 2010
Gross Weekly Wage: €860.01

A weekly ceiling of €600.00 applies to statutory redundancy payments.

As the appellant sought the payment of a redundancy lump by virtue of having been on lay-off he terminated his employment with the respondent and in such circumstances he is not entitled to compensation under the Minimum Notice and Terms of Employment Acts, 1973 to 2005. Accordingly, the claim under those Acts fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)