

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

EMPLOYEE - claimant

CASE NO.

MN1538/2011

Against

EMPLOYER - respondent

under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr F. Cunneen
Ms. E. Brezina

heard this claim at Naas on 28th November 2012.

Representation:

Claimant: Ms Susan Webster, Susan Webster & Co., Solicitors, Suva House, Main Street,
Maynooth, Co. Kildare

Respondent: REP

The determination of the Tribunal was as follows:-

Determination:

The respondent's representative opened its case by stating that the respondent's business is seasonal and during the winter months there is very little work available. The previous year they put their employees on lay off until the spring. They were forced to do the same again in 2010. They did not serve an RP9 initially but they did write to Social Welfare outlining the situation, as they had done in 2009. The respondent was not aware of the RP9 form and sought guidance from their representative in relation to its function. The RP9 forms were posted out to the claimant and his two colleagues, NC and MC in March, 2010 following an unplanned meeting with PH. The RP9 forms were returned to them several days later. The claimant and his two colleagues filled out part B of the forms stating their "Notice of Intention to claim a Redundancy Lump Sum Payment...". Unfortunately, incorrect dates were inserted on the forms by the claimant and his colleagues. The respondent's representative called the claimant and his two colleagues into the office on the 18th March and asked them to sign the amended forms. They were then asked to return to the office on the 3rd or 4th of April to sign the RP50s.

The claimant's and his two colleagues' representative opened their case to the Tribunal by stating that the claimant and his two colleagues were made redundant by the respondent and that they had not been served with an RP9 prior to the lay off. Following lay off they were called into the office and asked to sign documents in order to process their redundancy payments. Those documents were the RP9 and the RP50. The claimant and his two colleagues were not aware of the significance of signing part B of the RP9 form and stated that it was never their intention to give notice of their intention to claim redundancy.

AG gave evidence on behalf of the respondent. Her evidence accurately reflected her representative's opening statement. NC and MC gave evidence on behalf of the appellants. Their evidence was littered with inconsistencies. Furthermore, it did not reflect the opening statement made by their representative. What is worth noting is that MC stated that he did sign part B of the RP9 form at his home and did so because he "needed the money". That statement demonstrates his intention and knowledge in relation to the redundancy. The Tribunal is of the view that the claimant and his two colleagues signed part B of the RP9 form on the 15th and 16th of March and posted the forms back to the respondent. The fact that the wrong dates were inserted on the forms does not render them void. Furthermore, the fact that the forms were not served on the claimant and his two colleagues until after their lay off had commenced does not affect their rights to claim a redundancy lump sum figure at any stage during the lay off period. The Tribunal is also satisfied that the respondent would not have been in a position within four weeks from the material date to guarantee thirteen weeks work for the claimant and his two colleagues.

The Tribunal finds that the claimant and his two colleagues, at the material time and with the requisite knowledge and understanding, signed part B of the RP9 and as a result the claimant is not entitled to a payment under the Minimum Notice and Terms of Employment Act 1973 to 2005.

Accordingly, the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 is dismissed.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____
(Sgd.) _____
(CHAIRMAN)