

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
RP2656/2011
MN2101/2011

Against

EMPLOYER – *respondent*

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: Mr D. Mac Carthy S C

Members: Mr J. Horan
Mr. J. Dorney

heard this appeal at Dublin on 14th March 2013

Representation:

Appellant(s): Mr Paul Henry
SIPTU
Membership Information &, Support Centre, Liberty Hall, Dublin 1

Respondent(s): Mr Warren Parkes
Warren Parkes Solicitors
Suite 317, The Capel Building, Mary's Abbey, Dublin 7

The decision of the Tribunal was as follows:-

The respondent company acts as an agency which provides labour to construction sites. The appellant's employment commenced in 2002. He worked at various sites during his employment. The rate of pay varied depending on the job. The appellant was unhappy with this and brought a claim to the Rights Commissioner under the Payment of wages Act which was later withdrawn. The company contended that as they were an agency they were not subject to the Construction registered employment agreement and submitted a Labour Court recommendation to support this. The claimant's trade union representative represented him regarding the pay issue.

The appellant contended that he last worked on 22nd July 2011. A P45 was issued on 28th September 2011. His trade union queried the P45. The appellant contended that he told the respondent that he was on holidays in August. He contended that he sent a form RP9 to the

respondent during the first week of October 2011, but he did not keep a copy and the respondent contends that this was not received by them. The respondent contended that they had phoned the appellant on two occasions, 4th August 2011 & 29th August 2011, with offers of work which the appellant refused. There was a meeting on 12th October 2011 to discuss the situation. The respondent contended that there was no mention of lay-off or a RP9 form at the meeting which was about the rate of pay being offered and the claimant's contention that he was owed wages. The appellant did not respond to a subsequent offer of work by letter of 18th October 2011.

Determination:

The Tribunal is satisfied that the reason the employment ended was over a dispute on the rate of pay. There was work available which the appellant refused to take up. The appeals under the Redundancy Payments Acts, 1967 to 2007, and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)