

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP356/2012
MN376/2012
WT51/2013

against

EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. J. Hennessy
Mr. P. Trehy

heard this case in Portlaoise on 3 April 2013

Representation:

Appellant(s):
Mr. Thomas Farrell, Farrell & Partners, Solicitors,
O'Connor Square, Tullamore, Co. Offaly

Respondent(s):
No legal representation

The decision of the Tribunal was as follows:-

The appellant claimed that his employment, which commenced in May 2005, ended without notice by reason of redundancy on 21 February 2011. His gross weekly pay was estimated without contest at €650.00.

A claim was also made under the Organisation of Working Time Act, 1997, in respect of three days' holidays outstanding at the time of termination of employment with the respondent.

It was alleged that the appellant, a qualified carpenter, had never received payslips or a P45.

Giving sworn testimony at the Tribunal hearing, the appellant said that he had done his

apprenticeship with the respondent (a building contractor) and that he had done mainly roofing. He had had no written contract but had received five hundred euro net per week. In early March 2010 he had had an accident and had been off-work for ten months. It was alleged that the respondent had taken exception to the appellant's absence.

In January 2011 the appellant returned to work after ten months. He had called to the respondent a few times when he was out. All seemed fine at first but in February 2011 he had not got work and called to the respondent's house because the respondent had not answered his calls. The respondent said that he had no work. The appellant had had no wages the previous week. The respondent said that the appellant should sign on. The conversation only lasted three or four minutes. The respondent never approached him after that. The respondent had no work for him. They had got on well before the accident. The appellant had been working every day in January after he had gone back. He usually went to the respondent's home every morning. He would be sent home if there was no work. The first few mornings at the end he went to the respondent after getting no reply to calls. He had problems signing on. He was told that he lacked stamps. He sought a P45 from the respondent but never got one although he had worked for the respondent for six years. He received no notice from the respondent and was owed holiday pay.

Giving sworn testimony, the respondent said that he had had no work for the appellant on that final morning. He told the appellant that he might have work a few days per week. Others stayed on. The appellant said that this did not suit him and asked for a P45.

The respondent said that he had no work that day (21 February 2011) but that he "was only trying to stay going" in the building industry. He had three employees including the appellant. Others had stayed on and had finished up some six weeks before the Tribunal hearing. He said that he had less work coming in when the other employees left but that he had work constantly after the appellant left. He (the respondent) was still working but now had no employees.

Under cross-examination, the respondent did not deny that the appellant had had no work for a week or ten days before 21 February 2011. The respondent conceded that work had been getting very scarce.

When it was put to him that he had said that the appellant should sign on the respondent replied that he had been saying that there would be work one or two days per week. The respondent did not deny that the appellant's representative had written to him in connection with the appellant's wish to obtain a P45. The respondent said that the appellant could have signed on for two or three days per week. The respondent said that he himself only got paid when he had work.

It was put to the respondent that the appellant had been owed three days' holiday pay when his employment ended. The respondent just said that he did not know about this rather than contesting it. When it was put to him that the appellant's net pay had been five hundred euro per week he did not dispute that this would equate to a gross weekly pay of €650.00. The respondent accepted that the appellant's employment had ended on 21 February 2011 and that he had not been replaced.

To corroborate the appellant's testimony the appellant's partner (KH) took the oath and stated that she recalled that, after the appellant's getting no reply to text messages and phonecalls, he had gone to the respondent's home on 21 February 2011. She said that the appellant had reported to her that there was no more work and that he had to sign on. She added that, if he had been put on short-time, he could have signed on for a few days per week.

Determination:

The Tribunal is not without sympathy for the respondent who found himself without work. However, having heard the evidence, the Tribunal is of the view that the appellant was dismissed by reason of redundancy without notice and without payment for three days' holidays owed to him.

Under the Redundancy Payments Acts, 1967 to 2007, the Tribunal finds that the appellant is entitled to a redundancy lump sum based on the following details:

Date of birth:	13 July 1981
Date of commencement:	15 May 2005
Date of termination:	21 February 2011
Gross weekly pay:	€650.00

It should be noted that payments from the Social Insurance Fund are limited to a maximum of €600.00 per week.

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

Allowing the claim lodged under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, the Tribunal awards the appellant the sum of €2,600.00 (this amount being equivalent to four weeks' gross pay at €650.00 per week).

In addition, the Tribunal awards the appellant the sum of €390.00 (this amount being equivalent to 0.6 weeks' holidays at a gross weekly pay of €650.00) under the Organisation of Working

Time Act, 1997, in respect of holidays outstanding at the time of termination of his employment with the respondent.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)