

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

-claimant

CASE NO.

RP836/2008

MN906/2008

against

2 Employers

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison
Mr M. McGarry

heard this appeal at Castlebar on 15th January 2009

Representation:

Appellant(s): Mr Bob Walsh, Mc Govern & Walsh Solicitors, Pearse Plaza, Pearse Road, Sligo

Respondent(s): In person

The decision of the Tribunal was as follows:-

At the beginning of the hearing the Tribunal sought to establish the correct respondent. A spokesperson for the respondent informed them he was a director of the second named respondent and F. Limited. The appellant's solicitor explained that initially the appellant had been employed by OC Limited then he had worked for the second named respondent and was subsequently moved to F.Limited. He added that the appellant's P45 was impossible to read. The appellant's last tax card was produced. This was issued by revenue at the commencement of 2008 and his employer is recorded as the second named respondent. The appellant's solicitor produced documentation showing that the Companies Registration Office has struck off the second named respondent while F. Limited is still active.

The chair queried the standing of a director whose company had been struck off. The respondent had with him a P45 from both the second named respondent and F. Limited in respect of the appellant and stated that the appellant had worked with another director (EC) of the said companies on a personal level when his employment had ceased with the second named respondent.

Appellants Case

The appellant gave sworn evidence that he started work with EC a director with OC Limited in ground works. The gentlemen he worked for had a number of different enterprises; he then became aware of the second named respondent. He received no notice when his employer changed. He received payment by cheque either on a Friday or Saturday depending on how many days he had worked that week. The cheques were issued from a number of different companies, throughout his employment. At no stage during his employment did he receive a payslip. He maintained he worked continuously for them from October 2000 to December 2007. Within the T2 submitted by the respondents it is implied that he was self-employed from the last period of his employment, he refuted this and said he never registered with Revenue in this capacity.

On the 21st of December 2007 he received his two weeks pay and holiday pay owed to him and was told by one of the directors (EC) that they had no more work for him. This director offered him the job of maintenance man in a hotel. He refused this job on the basis that he felt he was not qualified to carry out this position. He was concerned that if a problem arose with the electrical or plumbing maintenance he would be held responsible for any claims personally. He was given his P 45. He went to the local Social Welfare office for unemployment payments.

At the time of the termination of his employment he was not aware of his rights under the Redundancy Payments Acts. In preparation for this hearing he asked the Social Welfare office for a copy of his P45 and when he received it he was shocked to discover the date of termination of his employment shown on this document was August 2007.

Under cross examination it was put to him that JF (director) had offered him the maintenance job on the 21st June 2007, the appellant could not recall this. He reiterated that he had concerns about this job, as he was not qualified to carry out same. He said another director (EC) approached him in December about this position. It was put to him that in December he was aware that he was not working for them as he was working for one of the Directors in a private capacity; the appellant refuted this and said if this was the case he would not have been due the holiday pay he received on 21st December 2007. As he did not receive payslips he could not have known whom he was working for.

In replying to questions from the Tribunal he confirmed that E.C. normally instructed him, he also handed him his weekly pay cheque and if he had any problems he would approach this individual. However another director (JF) would issue him with instructions an odd time.

Respondent Case

The respondent produced printouts of payments made to the appellant under two different company names, the members of the Tribunal examined these and the chair pointed out that these did not clarify who the proper employer was. The employer submitted that they had treated the appellant well during the course of his employment and that the appellant was an excellent worker.

Determination

The Tribunal noted from the evidence heard that the appellant had worked under the supervision of EC (director) from the commencement of his employment up to being dismissed on the 21st December 2007. Payment was made to him personally by cheque under a number of different company names but he never signed any forms, received any new contract, or received any notification of a transfer of undertaking under the Transfer of Undertaking Acts. JF (director) intermittently supervised the appellant's employment.

The Tribunal finds that there was a loose and casual arrangement to the appellant's employment records even to the extent that the respondents themselves were confused as to who the employer was at times. It was clear that the claimant never received new contracts or any redundancy payment when the name or title of his employer was changed. J F and EC (both directors) effectively operated under a number of legal entities; for the purpose of this claim the Tribunal finds that the employer was Eugene Cawley.

The Tribunal allows the appeal under the Redundancy Payments Acts, 1967 to 2003, and finds that the appellant is entitled to a redundancy lump sum based on the following criteria;

The claimant is entitled to his redundancy based on the following

Date of birth 22 March 1959
Commencement 1st October 2000
Termination 21st December 2007
Gross pay : €773.25

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

The Tribunal awards the appellant € 3093.00 for four weeks' notice under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

In the case of payments from the social insurance fund a statutory ceiling of €600.00 per week is applicable.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

