

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee –**Claimant**

UD1458/2008

against

RP1302/2008

Employer - **Respondent**

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

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 18 June 2009

Representation:

Claimant:

In person with XXXX as interpreter

Respondent:

In person

The determination of the Tribunal was as follows:

The respondent, who is a block and stone-laying contractor, employed the claimant as a block layer from 4 September 2006. The employment was uneventful until Sunday 28 September 2008 when the respondent telephoned the claimant's colleague (CC), who has a better level of English than the claimant, to relay the message to the claimant that there was no work for him on the following day, Monday 29 September 2008. Later on 29 September 2008 the respondent again telephoned CC, this time with the message that there was no work for the whole week. After some two weeks the claimant was informed that there was still no work for him even though some of his colleagues had now resumed work. The respondent's position is that this was because the work, which had come up, was in stone and the claimant was not considered competent for stonework and there was no block work available until December 2008.

Around 24 October 2008 the claimant submitted form RP9 to the respondent claiming redundancy by reason of lay off. The respondent took no action on receipt of this form. Some time in November 2008 the claimant sought his form P45 and the respondent's accountant duly supplied it. The respondent did not replace the claimant.

Determination:

During the hearing it was brought to the attention of the Tribunal that the claimant had also lodged a claim under the Unfair Dismissals Acts, 1977 to 2007 with the Rights Commissioner service and a recommendation had been issued by the Rights Commissioner in circumstances where the claimant did not attend the hearing to prosecute his claim. In such circumstances the Tribunal must find that there is no jurisdiction to hear the claim under those Acts.

When the claimant submitted form RP9 to the respondent on 24 October he had not been laid off for the prescribed four consecutive weeks in order to successfully trigger a claim for a lump sum payment under the Redundancy Payments Acts, 1967 to 2007. However there was no work for the claimant until December 2008 by which time the claimant would have been laid off for in excess of eight weeks. In any event the respondent took no action on receipt of form RP9, specifically he did not give counter notice. In such circumstances the Tribunal is satisfied that the claimant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria

Date of Birth	24 April 1984
Employment commenced	4 September 2006
Employment ended	3 November 2008
Gross weekly pay	€427-00

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

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)