

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

Employee - **Appellant**

RP1419/2008

MN1505/2008

against

Employer - **Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

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 16 June 2009

Representation:

Appellant:

In Person

Respondent:

Mr. Peter Loftus, Bourke, Carrigg & Loftus Solicitors,
Teeling Street, Ballina, Co. Mayo

The determination of the Tribunal was as follows:

The appellant was employed from May 2006 and the employment was uneventful apart from a one-week period of lay off over the Christmas/New Year period 2007-2008. Towards the end of the annual summer holidays on 11 August 2008 the appellant received a text message from the first named respondent in which the appellant was told not to return to work the following day as there was to be a one-week lay off due to lack of work. This lay off applied to all the workers in the respondent, a total of some twelve employees, none of whom had written contracts of employment. The claimant approached Social Welfare with a view to seeking payment for the lay off period. The appellant's case is that someone in Social Welfare told him that he needed a P45 in order to get paid for the lay off. It is common case that the person in Social Welfare telephoned the respondents' business and spoke to the first named respondent. The appellant's case is that the first named respondent told the Social Welfare person that a P45 would be issued.

The following day the appellant called in to the business and spoke with the office manager (OM) and asked about his P45. It is common case that OM advised the appellant to think carefully before deciding to confirm that he wanted a P45 to be issued. The respondents' position is that the

appellant mentioned the possibility of the offer of another job and was seeking guarantees about the future of the business he was working in. The appellant then went to speak to the first named respondent and it is the respondents' position that the appellant again mentioned the prospect of another job having arisen. It is common case that the appellant sought guarantees from the first named respondent about the prospects going forward. In any event the appellant decided to persist with his request for the P45 and shortly thereafter was provided with same by OM. The following week all remaining employees, apart from the appellant and one other who found alternative employment, went on to a three-day week. These two have not been replaced. The remaining employees are still in the employment and are now back to full-time working.

Determination:

The Tribunal is satisfied that this was a situation where the appellant, who clearly understood the implication behind requesting his P45, resigned from his employment by so requesting the P45 on 13 August 2008. In such circumstances claims under both the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2001 do not arise

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)