

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

WT18/2009

MN37/2009

Employee

MN38/2009

WT19/2009

Against

Employer

under

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 D. Cagney BL

Members: Mr. D. Winston
Mr. J. Dorney

heard this claim at Dublin on 5th June 2009

Representation:

Claimants(s): Mr. Jim Sheridan, Irish National Painters & Decorators
Trade Group, Liberty Hall, Dublin 1

Respondent(s): In person

The decision of the Tribunal was as follows:-

At the outset of the hearing the claims under the Organisation of Working Time Act, 1997 were withdrawn.

Claimants' Case

The first named claimant TM told the Tribunal that he was laid off work on 2 October 2008 and it was his last day of work. He signed on for unemployment benefit the following Monday as has had no further employment. He received his statutory redundancy. He did not receive work in lieu of notice and he did not have a verbal agreement with his employer. He received a telephone call on 2 October that he was on temporary lay off. The claimant was laid off between 2 October and 20 October 2008. He received a telephone from his employer on 17/18 October 2008.

The second named claimant JC told the Tribunal that he received a letter regarding his lay off. Four weeks later he signed a redundancy form. He did not receive minimum notice. He did not have a verbal agreement with the employer. He received his P45 on 20 November 2008. He did not enter into a verbal agreement with his employer. He signed on for unemployment benefit on 20 October 2008.

Respondents Case.

The director of the respondent told the Tribunal that both claimants were on temporary lay off. On 2 October 2008 the first batch of employees were let go. Five employees did not qualify for redundancy payment. The director thought that the situation would improve. On 17 October 2008 he had to lay off all employees. All staff were notified of redundancy and with their agreement their claims would be processed in lieu of minimum notice. The period of 17 October 2008 to 20 November 2008 would be used as minimum notice. He did not get anyone to sign the agreement and that was the mistake he made. He was not in a position to pay minimum notice. He was aware that he had to pay the claimants in lieu of notice but he stated that he had a verbal agreement with them.

Determination

It was alleged by the respondent that an agreement was entered into whereby the claimants would forgo their right to minimum notice where the employer affected early payment of the statutory redundancy entitlements. This was denied by both claimants. In any event the Tribunal are obliged to find that the claimants are entitled to the minimum notice where it was accepted by both parties it was not paid.

The first named claimant TM is entitled to compensation of €1550,00, which is equivalent to two weeks gross pay (€775.00 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The second named claimant JC is entitled to compensation of €4650,00 which is equivalent to six weeks gross pay (€775 per week) under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The claims under the Organisation of Working Time Act, 1997 were withdrawn at the outset of the hearing and no awards are being made under this Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

