

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

3 Employees

Against
Employer

Under

CASE NO.

RP27/2005
MN54/2005
RP28/2005
MN55/2005
RP29/2005
MN56/2005

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Ms. M. Sweeney
Ms. H. Kelleher

heard these appeals at Cork on 7 October 2005 and 23rd July 2007

Representation:

Appellants: Appeared in Person

Respondent: Mr. Tom Smyth, Tom Smyth & Associates, Human Resources Consultants,
41 Halldene Drive, Bishopstown, Cork (appeared 23rd July 2007)

The determination of the Tribunal was as follows:

Determination:

These cases were original listed for hearing on 7th October 2005. The respondent failed to attend on that day and the appellants informed the Tribunal that the name of the respondent might be different to that on the T1A forms submitted. The Tribunal adjourned the case in order to put the above-named respondent on notice.

On the second day of hearing, a representative for the above-named respondent and its manager attended. On consent of both parties the T1A forms were amended to substitute the above-named respondent. The manager of the respondent company apologised to the Tribunal for not attending the hearing on the first occasion.

Respondent's Case:

The respondent's commercial manager told the Tribunal that the company had a security contract with a client to provide twenty-four hour security on its premises. On that contract the appellants' hours had been tailored to accommodate their personal circumstances. Between ten to twelve officers were involved in servicing this contract. The contract came up for renewal and was not renewed due to the cost factor. The witness and the operations manager went to the site and informed the second and third named appellants of the loss of the contract, that they were doing their best to find alternative hours and could do so. The operations manager handled the situation thereafter. Work was found at different sites for the other officers. Hours were offered to the three appellants but these were different to what they had been working on the lost contract. The hours formerly worked by the appellants were not available on the alternative sites. The three appellants declined the offer of work on other sites. All three had excellent employment records and were offered references detailing this to prospective employers. Subsequently, the witness became aware that the appellants had commenced employment at the former site, with the company that had won the contract.

The operations manager was not available to give evidence to the Tribunal.

Appellants' Case:

It was the appellants' case that they had not received a specific offer of alternative work from the respondent. In letters dated 22nd October 2004, sent to each of the appellants, the operations manager informed them that since they could not make themselves available beyond the three days/nights which they had worked during the previous contract their continued employment with the respondent could not be supported in the respondent's "current operational environment" and that it was assumed that their employment with the respondent would cease from 28th October 2004. The Tribunal had sight of these letters.

Determination:

Having considered the evidence the Tribunal is satisfied, on the balance of probability, that the respondent did not make a firm offer of specific employment to the appellants. The Tribunal, having regard to the situation obtaining in the respondent's business as outlined in the letter of 22nd October 2004, is further satisfied that each of the appellants is entitled to a statutory redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2003, based on the following criteria:

In the case of the first named appellant:

Date of Birth:	22 nd October 1945
Date of Commencement:	4 th October 2002
Date of Termination:	28 th October 2004
Gross Pay:	€324.00

Having regard to the letter of the 22nd October 2004, giving one week's notice, the Tribunal awards the first named appellant €324.00 (being one week's pay) under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

In the case of the second named appellant:

Date of Birth:	8 th May 1964
Date of Commencement:	11 th October 2001
Date of Termination:	28 th October 2004
Gross Pay:	€325.00

Having regard to the letter of the 22nd October 2004, giving one week's notice, the Tribunal awards the second named appellant €325.00 (being one week's pay) under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

In the case of the third named appellant:

Date of Birth:	21 st July 1966
Date of Commencement:	27 th July 2001
Date of Termination:	28 th October 2004
Gross Pay:	€353.40

Having regard to the letter of the 22nd October 2004, giving one week's notice, the Tribunal awards the third named appellant €353.40 (being one week's pay) under the Minimum Notice and Terms of Employment Acts 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)