

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

Employee

CASE NO.

RP208/2006

against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr W. Power

Mr B. Byrne

heard this appeal at Dublin on 18th September 2006

Representation:

Appellant(s) : In Person

Respondent(s) : XXXX

The decision of the Tribunal was as follows:-

Background

The claimant was employed as a teacher for the respondent since 1993. Until June 2005 his teaching hours should not to be equated with working hours) were 14½ hours a week. On June 9th 2005 these teaching hours were reduced to two and three-quarter hours a week. He raised the matter in the contents of the letter dated February 22nd 2006 to the respondent:

“I am informed that if my hours are reduced by more than 50% and I am employed for more than 2 years I have an entitlement under the Redundancy Payments Act 2003. I spoke to you a few weeks ago in this regard and would like to know what the current status is. “

The reply from the respondent dated February 24th 2006 stated:

“You spoke to me regarding this matter on Friday 10th of February. I spoke to XXXX head of personnel and he informs me that you are not entitled to redundancy as you have not been made redundant. I suggest you take up this matter with him.”

Determination

Section 11 of the Redundancy Payments Acts 1971:

“(1) An employee shall not be entitled to redundancy payment by reason of having been laid off or kept on short-time unless—
(a) he has been laid off or kept on short-time for four or more consecutive weeks or, within a period of thirteen weeks, for a series of six or more weeks of which not more

than three were consecutive, and

(b) after the expiry of the relevant period of lay-off or short-time mentioned in paragraph (a) and not later than four weeks after the cessation of the lay-off or short-time, he gives to his employer notice (in this Part referred to as a notice of intention to claim) in writing of his intention to claim redundancy payment in respect of lay-off or short-time.

(2) Where, after the expiry of the relevant period of lay-off or short-time mentioned in subsection (1) (a) and not later than four weeks after the cessation of the lay-off or short time, an employee to whom that subsection applies, in lieu of giving to his employer a notice of intention to claim, terminates his contract of employment either by giving him the notice thereby required or, if none is so required, by giving him not less than one week's notice in writing of intention to terminate the contract, the notice so given shall, for the purposes of this Part and of Schedule 2, be deemed to be a notice of intention to claim given in writing to the employer by the employee on the date on which the notice is actually given."

This section replaced Section 12 of the original Redundancy Payments Acts 1967. The original section required an employee also to terminate employment in order to be entitled to a redundancy payment. In the substituted section there is no such requirement. As a result of this amendment it is possible for an employee on short-time to receive a redundancy and also continue working in the job at reduced hours. Oddly enough there is no provision in the Acts that the amount of the redundancy payment should be scaled down to allow for the reduced hours still being worked.

The Tribunal hold that the letter of February 22nd 2006 read in conjunction with the reply is in substance, if not in exact form, a notice of intention to claim within the meaning of that section

The decision, of course, has the effect of breaking the continuity of his service for the purposes of the Redundancy Payments Acts, 1967 to 2003.

Accordingly, the Tribunal determines that the claimant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts, 1967 to 2003 based on his continuous service and the following information:

Date of Birth:	19 th April 1945
Date of Commencement:	1 st September 1993
Date of Termination:	9 th June 2005
Gross weekly pay:	€ 650.00

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)