

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

- appellant

CASE NO.

RP728/2008

Against

Employer

- respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr J. Horan
Ms P. Ni Sheaghda

heard this appeal at Naas on 16th February 2009.

Representation:

Appellant: Mr. Andy Walsh, Walsh Kealey & Co., Dublin Road, Edenderry,
Co. Offaly

Respondent : Mr. Tom O'Grady, IBEC, Confederation House, 84/86 Lower Baggot
Street, Dublin 2

The decision of the Tribunal was as follows:-

Respondent's Case:

It is the respondent's contention that in the late 1980s and early 1990s employees were employed on a seasonal basis. They were taken on in August and employment was terminated in December or early January. The company has not retained paperwork relating to these years including P45s and P60s. The correspondence in the company stated that the appellant's employment commenced on 4th October 1991.

Appellant's Case:

The appellant commenced employment on 4th October 1989. He was initially employed on a seasonal basis and then full time some time after 2nd October 1991. Following receipt of his redundancy payment covering the period 2nd October 1991 to 18th July 2008 the appellant received his P45.

Determination:

The Tribunal has carefully considered the evidence adduced. The appellant seeks to have a two-year period from 4 October 1989 to 1st October 1991 as being reckonable service for the purpose of calculating an appropriate redundancy appeal.

The respondent is claiming that the employee did not build up service for these two years as he was being employed on a seasonal basis and that when he was not in their employment he was effectively “let go” with no obligation on either party to re-activate the employment relationship.

The Tribunal has carefully considered the relative position of each party and must consider the understanding that the parties had at the start of their relationship which, it is common case commenced in 1989. The evidence tends to support the appellant’s contention that he was ready and available for work whenever the respondent had work for him. When work was scarce, the appellant would avail of social welfare payments, which was fully supported by the respondent. The employment relationship was never formally terminated in this two-year period. Instead the respondent would supply the appropriate letter of introduction explaining that lack of immediate work and thereby allow the appellant get unemployment benefit.

The Tribunal would see the letter from the Department of Social Welfare dated 22 October 2008 together with the P60s from the years 1989/1990 and 1990/1991 as supportive of the appellant’s contention that he has been in the continuous employment of the respondent since 1989.

The relationship was more than a casual one being supported by the respondent.

The Tribunal therefore finds that the period from 4th October 1989 to 1st October 1991 should be used for the purpose of calculating the statutory redundancy due and owing to the appellant. His date of birth is 18 May 1951 and his gross weekly wage is €791.00.

It should be noted that a statutory weekly ceiling of €600.00 currently applies to payments from the Social Insurance Fund.

This award is made subject to the appellant fulfilling current social welfare requirements in relation to PRSI contributions.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)