

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee
- *appellant*

CASE NO.

RP514/2006

against

Employer - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr E. Murray

Members: Mr. M. Forde
Mr. T. Kennelly

heard this appeal at Limerick on 12th May 2009
and 13th May 2009

Representation:

Appellant(s): Dr. B. Hayes, Hayes, Solicitors, 2/3 Glenworth Street, Limerick

Respondent(s) : Mr. Davitt Geraghty, Geraghty & Company, Solicitors, 1 Rosemary Avenue,
Eyre Square, Galway

The decision of the Tribunal was as follows:-

The appellant in this case is a sixty six year old rail worker who entered into an agreement with the Respondent on the 1st of September 2005 in respect of the severance of his employment. Under the terms of the Severance Agreement the appellant retired from his employment on the 29th of September 2005 and he received payment of €107,850.00 on the 5th of October 2005. In addition he received his pension entitlements. At the time of his retirement the appellant was in receipt of an annual gross salary of €41,000.00. Under the scheme the appellant received Statutory Redundancy plus five thirds of his contract rate, the latter portion being subject to an upper limit of the amount that the appellant would have actually earned between the date of redundancy and the date on which he would have ordinarily retired.

The appellant and the respondent entered into an agreement for the payment by the respondent to the appellant of a sum of money substantially in excess of what he would have been ordinarily entitled to under the Redundancy Payments Acts. In consideration of this payment the appellant

was to retire from his employment with the respondent and did so on the 29th of September 2005. This was a contract based on a severance scheme entitled “Cessation of Rail Container Freight Services” negotiated between the relevant Trade Unions representing the rail workers and the respondents.

The appellant was given indicative figures as to what his severance payment would be but when he ultimately received his cheque it was about €6,500.00 less than those figures. The indicative figures were based on the appellant retiring on the 29th of July 2007 but in fact the appellant did not retire until the 29th of September 2007. During the intervening period he was paid his salary and took some annual leave that he was due. The respondents claimed that the variation in the severance payment was due to the later retirement date.

The appellant now disputes the calculation of the sum payable to the appellant under the said Voluntary Severance Scheme. The following claims are now made:

1. That the appellant’s severance payment was deficient by €5748.00 by virtue of the application of the incorrect start date by the respondent in respect of the appellant’s employment.
2. That the severance payment is deficient by a further €6364.24 by virtue of the application of the incorrect cessation date by the respondent, in respect of the appellant’s employment.
3. That there is a further additional sum of €3940.00 due in respect of holidays allegedly not taken by the appellant at the time of his retirement.
4. That the appellant should have received an additional sum of €31,643.00 which it is contended would have been available to him if a different redundancy scheme, introduced several months after the appellant left his employment, had been offered to him and that the respondent knew or ought to have known that such a scheme would be introduced and would be of greater benefit to the appellant and should have advised him accordingly.

Determination

This Tribunal derives its jurisdiction in redundancy matters from Section 39 of the Redundancy Payment Acts 1971 as amended. It is asked in this case to interpret and enforce what was a voluntary contract for a sum significantly in excess of what the Tribunal would ordinarily have jurisdiction to award. The Tribunal can find nothing in the Acts that confers authority or jurisdiction upon it to make any order in relation to a dispute over the interpretation or application of a voluntary severance agreement entered into by consenting parties.

This proposition has during the course of the hearing been put to the legal representatives of the parties and the appellant’s representatives have conceded that there is nothing in the Act that confers jurisdiction on the Tribunal to deal with the voluntary portion of the agreement but urges us to adjust the statutory portion. The Tribunal declines to do this on the basis that the agreement is an integrated agreement, the elements of which cannot be severed and dealt with individually.

Consequently, on the basis that the Tribunal lacks jurisdiction in the matter the Tribunal dismisses the application.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)