

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

EMPLOYEE – *claimant*

CASE NO.

UD277/2009
RP253/2009
MN275/2009

against

EMPLOYER – *respondent*

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey B.L.

Members: Mr. R. Prole
Mr. A. Butler

heard this claim at Dublin on 27th October 2009

Representation:

Claimant(s): Mr. Marcin Szulc, Maguire McClafferty, Solicitors, 8 Ontario Terrace,
Portobello Bridge, Dublin 6

Respondent(s): No appearance or representation

The determination of the Tribunal was as follows:-

Background:

This case was previously listed for hearing on 22 July 2009. On that date, the matter was settled between the parties and the case was withdrawn with a liberty to re-enter period to allow for the implementation of the settlement. The Tribunal were not informed of the terms of that settlement.

On 2 September 2009, the claimant's legal representative requested a new hearing date, as the terms of the settlement had not been implemented. Subsequent to the notice of hearing issuing to the parties in relation to the new hearing, the respondent informed the Tribunal by letter that he had implemented the agreement and enclosed a copy of the RP50 form upon which that agreement had been based. He also indicated in his letter that he would not be attending the new hearing as he had implemented the settlement that had been previously agreed.

Submission:

The claimant's representative explained that a number of claims had been made by the claimant to the Employment Appeals Tribunal and the Rights Commissioners Service. The settlement that had been agreed between the parties in July 2009 was based on the payment of redundancy through the completion of the RP50 form, and a monetary figure in consideration of the other claims, which were to be withdrawn. The redundancy amount on the RP50 form, which the claimant received from the respondent was less the monetary figure. However, per the agreement, the monetary figure should have been included in the redundancy amount, as the claimant's gross wage was more than €600.00 per week. The calculations from the last thirteen weeks of wages, which the claimant received into his bank account – per his bank statements – averaged his net wage at €599.43 per week. These wages figures included figures for overtime and holiday pay.

At the time of completing the claimant's T1-A form (*Notice of Appeal*), the claimant's bank statements had not been available and same had been completed by the claimant's representative on the basis of guesswork on the part of the claimant. The figure given on the T1-A form for the claimant's basic wage was €500.00. The claimant was never issued with payslips.

The RP50 form was completed on the basis of the July agreement. This agreement was not committed to writing and there was no evidence to indicate that the respondent now agreed to a change in the basic wage figure. However, it was the claimant's statutory entitlement to a redundancy payment calculated at the higher figure.

Claimant's case:

In his sworn evidence, the claimant confirmed that his employment with the respondent commenced on 1 August 2005 and ended on 17 October 2008, and his basic wage was €500.00 per week.

Determination:

The Tribunal was satisfied that the respondent was duly notified of the hearing. However, there was no appearance by him, or representation on his behalf.

The Tribunal noted the RP50 form, which was completed by the respondent, indicating that he had not made a payment for redundancy to the claimant and that same should be paid from the Social Insurance Fund. While being fair to all of the parties concerned, the Tribunal is also cognisant of its responsibility in safeguarding the funds of the Social Insurance Fund and ensuring correct access to same.

The sworn evidence of the claimant was that he was paid a basic wage of €500.00 per week. When the parties initially settled this case in July, the agreed figure used for the calculation of the redundancy and used by the respondent when completing the RP50 form corresponds with this evidence. As it does not appear that the respondent has the means to pay the redundancy, the Tribunal is of the view that he would not have an agenda in whatever figure is suggested for use in the calculations. However, it appears that the figure of €500.00 was the basis of the settlement at the time. It would also have been the basis of the Tribunal's deliberations had that hearing proceeded, unless the evidence contradicted this. Accordingly, the calculations are based on the documents before this Tribunal and on the oral evidence of the claimant.

Thus, based on the uncontested evidence of the claimant, the Tribunal finds that the claim under the Redundancy Payments Acts, 1967 to 2007 succeeds and awards the claimant a redundancy lump sum, which is to be calculated on the basis of the following criteria:

Date of birth:	26 March 1980
Date of commencement:	01 August 2005
Date of termination:	17 October 2008
Basic weekly wage:	€500.00

This award is made subject to the claimant having been in insurable employment under the Social Welfare Acts during the relevant period.

As claims under unfair dismissals legislation and redundancy payments legislation are mutually exclusive, the claim under the Unfair Dismissals Acts, 1977 to 2007 automatically fails and is therefore dismissed. As no evidence was adduced in relation to the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, this claim is also dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)