

**EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
EMPLOYEE - *appellant*

CASE NO.  
MN348/2009  
RP344/2009  
WT148/2009

against  
EMPLOYER - *respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr J. Fahy BL

Members: Mr T. Gill  
Dr. A. Clune

heard this appeal at Loughrea on 23rd September 2009

Representation:

\_\_\_\_\_

Appellant(s) : Mr. Paul Hardy, Assistant Branch Organiser, SIPTU, Galway  
No 2 Branch, Forster Court, Galway

Respondent(s) : Blake & Kenny, Solicitors, 2 St Francis Street, Galway

The decision of the Tribunal was as follows:-

**Preliminary Point**

The claim under the Organisation of Working Time Act 1997 was withdrawn at the outset of the hearing.

## **Appellant's Case**

The appellant gave direct sworn evidence that he commenced working for company X on 26 January 2004. This company was subsequently taken over by the respondent company in September 2008 and he continued working for the respondent without any break in his employment. Prior to September 2008 he received a gross weekly salary of €540.00. When the respondent became his employer a new pay system was introduced, whereby he was paid an hourly rate of €12.00 per hour for 39 hours per week and thereafter at a rate of time plus one third. This did not result in any significant alternation to his salary. On 26 January 2009 he was informed that he was being made redundant and the last day he worked for the respondent was 30 January 2009. He received one week's notice of his impending redundancy.

## **Respondent's Case**

The respondent's accountant gave direct sworn evidence that he was involved in the transfer of undertaking which occurred in September 2008. After the transfer occurred a new pay method was introduced whereby subsistence was paid to employees. This had the effect of minimising the cost to the employer and employees in terms of reducing the amount of PRSI and tax payable by both parties. Both parties were beneficiaries of the introduction of this system. The introduction of this method resulted in the appellant receiving a weekly gross pay of €390.00 plus a weekly subsistence of €150.00.

In response to questions from the Tribunal he stated that subsistence paid to the appellant from September 2008 onwards is not part of the appellant's salary. He agreed that if the appellant had been made redundant prior to September 2008 his redundancy calculation would have been based on a gross weekly salary of €540.00. He accepted that the appellant commenced employment on 26 January 2004 and his final working day was 30 January 2009 and he received one week's notice of his redundancy.

## **Determination**

The Tribunal having carefully considered the evidence are satisfied that the appellant earned an average gross weekly salary of €540.00 at the date of the transfer of undertaking. This was not disputed by the respondent. The Tribunal notes that while the respondent introduced a method of calculating gross pay for employees which was beneficial to both parties, it is nevertheless satisfied that the level of pay earned by the appellant was not reduced.

Accordingly the Tribunal determines that the appellant is entitled to a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of Birth:	21 June 1963
Date of commencement of employment:	26 January 2004
Date of termination of employment:	30 January 2009
Gross Weekly Pay:	€540.00

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

The Tribunal further determines that the appellant commenced employment on 26 January 2004 and his employment continued without interruption until 30 January 2009. The appellant has an entitlement of four weeks notice or payment in lieu thereof based on his length of service. It was accepted by both parties that one week's notice had been paid. Therefore the Tribunal awards the appellant the sum of €1620.00 being the equivalent of three weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

