

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE (Appellant)

CASE NO.
RP447/2009

against
EMPLOYER (Respondent)

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. N. O'Carroll-Kelly B.L.

Members: Mr. J. O'Neill
Mr. J. Dorney

heard this appeal at Naas on 4th November 2009

Representation:

Appellant: In person

Respondent: Ms. Edel Sheerin, Ivor Fitzpatrick & Co, Solicitors,
44-45 St. Stephens Green, Dublin 2

The decision of the Tribunal was as follows:

Respondent's Case:

It was the respondent's case that the appellant did not hold the requisite service to qualify for a redundancy payment under the Acts.

A director of the company gave evidence that she held a meeting with all of the employees in August 2008 to inform them the restaurant was closing. A letter was provided to the appellant to inform her that she was being made redundant. If an employee was due a redundancy payment it was paid to them at that time. The accountant informed the director that the appellant did not have the requisite service to qualify for a redundancy payment. The director informed the appellant of this at the meeting. The restaurant subsequently closed on the 6th September 2008. The appellant worked some extra days in the office, which brought her date of termination to the 10th September 2008.

The director stated that the date of commencement on the P45 appeared to have been changed from the 16th September 2006 to read the 13th September 2006. A letter from Revenue was requested to confirm the dates of the appellant's employment. The letter received from Revenue stated

hat according to their records the appellant commenced her employment on the 16th September 2006 and her employment was terminated on the 10th September 2008.

Appellant's Case:

It was the appellant's case that she commenced employment with the respondent on the 13th September 2006 working on a trial basis for the 13th and 14th September 2006. The appellant stated that the payslip dated the 21st September 2006 showed that she had worked six hours at the end of the previous working week which ran from Friday to the following Thursday. Her contract showed an incorrect date of commencement of the 16th September 2006 as she had worked prior to this date on a trial basis for the respondent.

When the appellant received her P45 the date of commencement read the 16th September 2006. The appellant informed the financial controller that this date was incorrect and he amended it to read the 13th September 2006.

Determination:

The Tribunal provided the respondent with a period of time after the date of hearing to attempt to locate timesheet records and cards for the appellant in relation to the date of commencement. However, attempts to locate these records were unsuccessful.

The Tribunal considered the evidence adduced at the hearing. The Tribunal preferred the evidence of the appellant in relation to the date of commencement. Accordingly, the Tribunal finds that the appellant had the requisite service to qualify for a payment under the Redundancy Payments Acts, 1967 to 2007. In considering the issue of requisite service the Tribunal noted the mathematical formula for a year, as being fifty-two weeks and one day and that the year 2008 was a leap year.

The Tribunal awards the appellant a lump sum payment based on the following criteria.

Date of Birth:	7 th July 1978
Date of Commencement:	13 th September 2006
Date of Termination:	10 th September 2008
Gross Weekly Pay:	€350.00

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

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)