

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE – *appellant*

RP535/2009

WT225/2009

against

EMPLOYER – *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 ORGANISATION OF WORKING TIME ACT, 1997

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. M. Gilvarry

Members: Mr.D. Morrisson
Ms R. Kerrigan

heard this appeal at Donegal on 12th November 2009

Representation:

Appellant : Fidelma Carron, SIPTU, Port Road, Letterkenny, Co. Donegal

Respondent : In Person

The decision of the Tribunal was as follows: -

The claim under the Organisation Of Working Time Act, 1997 was withdrawn at the outset of the hearing.

The appellant worked for the respondent as a car salesman. In August 2008 the appellant was informed that due to the economic downturn he would now be working a three-day week, he did not get written notice of this. On the 15th of January the appellant was asked to take a pay cut which he refused, as a result the appellant was informed he was being put on temporary lay-off. At that meeting the appellant was given an RP9 form to sign, he asked for full redundancy to which the respondent replied that he could not afford to pay the redundancy lump sum. By letter dated the 6th of February the respondent offered the appellant a further 13 weeks continuous employment based on a three-day week as before the lay-off. The appellant responded in writing requesting either full-time hours or to be made redundant. This letter also stated that the appellant would be pursuing a redundancy claim if the respondent did not clarify his position by the 20th of February 2009. There was no further contact between the respondent and appellant.

Determination:

The Tribunal finds that the claim under Redundancy Payments Acts, 1967 to 2007 fails as the appellant was offered short-time employment but refused.

Section 11 of the Redundancy Payments Acts 1971:

“(1) An employee shall not be entitled to redundancy payment by reason of having been laid off or kept on short-time unless—

(a) he has been laid off or kept on short-time for four or more consecutive weeks or, within a period of thirteen weeks, for a series of six or more weeks of which not more than three were consecutive, and

(b) after the expiry of the relevant period of lay-off or short-time mentioned in paragraph (a) and not later than four weeks after the cessation of the lay-off or short-time, he gives to his employer notice (in this Part referred to as a notice of intention to claim) in writing of his intention to claim redundancy payment in respect of lay-off or short-time.

(2) Where, after the expiry of the relevant period of lay-off or short-time mentioned in subsection (1) (a) and not later than four weeks after the cessation of the lay-off or short time, an employee to whom that subsection applies, in lieu of giving to his employer a notice of intention to claim, terminates his contract of employment either by giving him the notice thereby required or, if none is so required, by giving him not less than one week's notice in writing of intention to terminate the contract, the notice so given shall, for the purposes of this Part and of Schedule 2, be deemed to be a notice of intention to claim given in writing to the employer by the employee on the date on which the notice is actually given.”

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)