

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE – **Appellant**

RP832/2009

MN779/2009

WT330/2009

against

EMPLOYER – **Respondent**

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr. J. Browne
Ms. E. Brezina

heard these appeals at Killarney on 1 February 2010

Representation:

Appellant:
In person

Respondent:
Mr. Paul O'Donoghue, O'Donoghue O'Dwyer Solicitors,
Langford Street, Killorglin, Co. Kerry

The determination of the Tribunal was as follows:

The respondent is a sole trader who has operated a pit supplying raw materials to the construction industry for some 30 years. The appellant was employed as a mechanic to maintain the mobile plant and other equipment at the pit some time in 2006. The appellant's position is that he was employed from 15 May 2006. The respondent pointed out that the appellant was not registered with the revenue commissioners until 4 September 2006 but could not recall when the appellant commenced employment. It is common case that the parties agreed that the appellant could take time off from time to time to entertain visitors from overseas. There is a dispute between the parties as to whether the appellant received payment for these days off in lieu of holiday pay.

The employment was uneventful until late July 2008 when, because of a downturn in the

construction industry, the appellant, along with the other employees at the pit was put on short-time working one, two or three days a week. This arrangement continued until 7 January 2009 when the respondent told the appellant that there was no work for him. The appellant asked the respondent about redundancy to be told that there would be more employment in the future and that, accordingly, the appellant was not entitled to redundancy pay.

Determination:

Section 11(2) of the Redundancy Payments Acts provides

Where

(a) for any week an employee's remuneration is less than one-half of his normal weekly remuneration or his hours of work are reduced to less than one-half of his normal weekly hours,

(b) the reduction in remuneration or hours of work is caused by a diminution either in the work provided for the employee by his employer or in other work of a kind which under his contract the employee is employed to do.

(c) it is reasonable in the circumstances for the employer to believe that the diminution in work will not be permanent and he gives notice to that effect to the employee prior to the reduction in remuneration or hours of work,

the employee shall, for the purposes of this Part, be taken to be kept on short-time for that week

The Tribunal is satisfied that the appellant had been kept on short-time as defined in the Acts and that after the prescribed period of either four consecutive weeks or six weeks in a thirteen-week period had passed he requested a redundancy lump sum payment from his employer. The respondent refused the appellant's request for redundancy payment without issuing counter notice. Accordingly the Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria, the Tribunal accepting the appellant's evidence about the commencement of the employment.

Date of Birth	06 November 1972
Employment commenced	15 May 2006
Employment ended	7 January 2009
Gross weekly pay	€573-69

A claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 does not arise where a lump sum payment under the Redundancy Payments Acts is awarded on foot of lay-off or short-time working.

The Organisation Of Working Time Act places an onus on the respondent to keep records of holidays granted to employees. The respondent accepted that he had no such records.

aving considered all the circumstances the tribunal awards €1,147-38, being two weeks' pay,
under the Organisation Of Working Time Act, 1997

These awards are 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)