

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – appellant

CASE NO.
RP1737/2009

against

EMPLOYER – respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms J McGovern BL

Members: Mr A O'Mara
Mr P Trehy

heard this appeal at Dundalk on 1st April 2010

Representation:

Appellant(s): Ms Gail Nohily BL, instructed by:
Ms Patricia Fee
Catherine Fee & Co
Solicitors, Queens Business Centre, Earl Street, Dundalk, Co Louth

Respondent(s): In person

The decision of the Tribunal was as follows:

Appellant's Case:

The appellant worked as fitter for the respondent company. In 2009 he was put on a three-day week. He believed he was on short time. His working hours had originally been 8am to 5.30pm Monday to Friday, with a half hour lunch break, and 8am to 4pm on Saturdays with no break. In 2005, the Saturday hours changed to 8am to 1pm. He was paid time and a half for four hours on Saturdays plus one hour on double time. All of which he contended meant that he worked 50½ hours per week. In February 2009 his hours were reduced to 8am to 4.30pm three days per week (Tuesday, Wednesday, Thursday).

After four weeks on a three day week the appellant asked his employer for a redundancy payment or full-time work. His employer used the redundancy calculator online to see how much the appellant would be entitled to and the appellant signed part b of the RP9 claim form.

The day the appellant expected to leave, April 2nd 2009, his employer gave him a letter which stated that as he was on a three day week he was not on short time and therefore was not entitled to a redundancy payment. The appellant left as he had another job lined up elsewhere.

The appellant contended that he was paid an extra €1 in cash for every hour worked, which was paid to him at the end of every month. This began when the Euro currency was introduced and finished in 2009. If he did overtime before 8am he received £10 sterling.

The appellant's representative contended that the appellant was on less than half his normal hours and less than half his normal pay and that he is entitled to a redundancy payment.

Respondent's Case:

A witness for the respondent company gave evidence that the appellant worked an average of 42 hours in 2008. He only worked seven or eight Saturdays in 2008. His hours were reduced to 24 hours in 2009. His net pay was reduced from €522.00 to €322 per week.

When the appellant asked for a redundancy payment he had calculated what he would be entitled to, but he told him that he would have to speak to the Directors. The Directors agreed to give him his redundancy as long as the company would receive a rebate. The witness contacted the Redundancy Payments Unit and was told that the company would not receive a rebate if the appellant was claiming redundancy by way of a RP9 form while on a three day week.

He explained to the appellant on March 31st 2009 that a three day week would not qualify him for a redundancy payment. He did not speak to the appellant at all on the last day he worked. Another employee on a three day week took on the appellant's hours after he left. The company offered voluntary redundancy in January 2010 which two staff accepted.

The cash payments made to the appellant were in respect of expenses and it was stopped in 2005.

Determination:

By majority, Mr Trehy dissenting, the Tribunal find that the appellant left his employment. On the evidence of both parties the appellant was aware before he left his employment that he was not going to receive a redundancy payment. His job was still available to him and it was not a redundancy situation. By majority, the Tribunal finds that the appellant did not qualify for short time entitlements, and believes, based on all the evidence, that he was working an average of 42 hours and not 50½.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)