

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: EMPLOYEE		CASE NO.
	– <i>appellant No.1</i>	RP2468/2009
EMPLOYEE	– <i>appellant No.2</i>	RP2470/2009
EMPLOYEE	– <i>appellant No.3</i>	RP2471/2009
EMPLOYEE	– <i>appellant No.4</i>	RP2472/2009

against
EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr R. Maguire, B.L.

Members: Mr J. Hennessy
Ms. N. Greene

heard this appeal at Abbeyleix on 10th June 2010

Representation:

Appellant(s) : Mr Henry O'Shea, SIPTU, 3 Peppars Court, Portlaoise,
Co. Laois

Respondent(s) : Mr. Tim O'Connell, IBEC, Confederation House, 84/86 Lower
Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

Summary Of Facts

The four named appellants were made redundant on 28 August 2009. Their dates of commencement of employment ranged from 1977 to 2001. The appellants worked as general workers in the loading bay and slaughter areas of the respondent company. They worked a 5 day 39 hours working week until sometime in 2007 when their working hours were reduced by the company. From this time onwards until they were made redundant, the appellants did not know from week to week and sometimes from day to day how many hours they may be required to work. The appellants did not accept their reduced hours and constantly sought full –time work from the

respondent. The company engaged with the workers trade union throughout the process and paid redundancy to the appellants based on a 26 hour working week. This was done so on the company's understanding of the relevant redundancy legislation.

The parties agreed that there was a redundancy situation and the only point for determination for the Tribunal was the amount of the lump sum payable to the appellants.

Submission in relation to Redundancy Payments Act 1967

It was submitted on behalf of the Respondent that the provisions of s. 15(2B) of the Redundancy Payments Act 1967 as amended had the effect of fixing the normal weekly remuneration of the employees. This section is headed "Disentitlement to redundancy payment for refusal to accept alternative employment." The section deals with the position of employees who are offered alternative employment, and when this affects their entitlement to claim redundancy. Section 15 (2B) states as follows:

"Where –

- (a) an employee's remuneration is reduced substantially but not to less than one half of his normal weekly remuneration, or his hours of work are reduced substantially but not to less than one-half of his normal weekly hours, and
- (b) the employee temporarily accepts the reduction in remuneration or hours of work and indicates his acceptance to his employer, such a temporary acceptance for a period not exceeding 52 weeks shall not be taken to be an acceptance by the employee of an offer of suitable employment in relation to him."

The Respondent submitted that, on the basis of the legal maxim *expressio unius est exclusio alterius*, that where an employee's remuneration or working hours was substantially reduced but not to less than half of their normal weekly hours or remuneration, and that situation subsisted for more than 52 weeks, this was considered an acceptance of the reduction and was an acceptance of suitable employment under that section. It was not argued that there was an offer of alternative employment given to the appellants in this case and accepted by them. Rather, by analogy, the Respondent argued that in this instance, the acceptance of the reduction in working hours and remuneration attendant on that reduction by the appellants for in excess of 52 weeks reduced their "normal weekly working hours" for the purposes of the Redundancy Payments Act 1967. The appellants opposed this interpretation.

Determination

Schedule 3 of the 1967 Act as amended sets out the calculation for "normal weekly remuneration" for the purposes of the calculation of the lump sum payable to the employee in the event of a redundancy, but there was no provision indicated to the Tribunal defining what the "normal weekly working hours" is for the purposes of that schedule. While the Respondent sought to infer by analogy from section 15(2B) that the "normal weekly working hours" could not refer to a period in excess of 52 weeks in advance of the date of redundancy, the Tribunal is not convinced by this argument. In the particular circumstances of this case, where the Appellants all *bona fide* and reasonably believed that the reduction in their hours of working was temporary and that they would resume working for five days a week in the future, the Tribunal determines that the "normal weekly working hours" for the purposes of the calculation of their redundancy payment is the normal weekly working hours of the appellants before the reduction in hours of 2007.

Accordingly the appeals under the Redundancy Payments Acts 1967 to 2007 succeed and the appellants are awarded a lump sum payment based on the following information:

EMPLOYEE

Date of Birth: 27 December 1957
Date of commencement of employment: 1 February 2000
Date of termination of employment: 28 August 2009
Gross Weekly Pay: €544.79

EMPLOYEE

Date of Birth: 2 January 1958
Date of commencement of employment: 10 October 1977
Date of termination of employment: 28 August 2009
Gross Weekly Pay: €543.25

EMPLOYEE

Date of Birth: 6 January 1961
Date of commencement of employment: 1 October 2001
Date of termination of employment: 28 August 2009
Gross Weekly Pay: €514.91

EMPLOYEE

Date of Birth: 14 March 1953
Date of commencement of employment: 16 June 1979
Date of termination of employment: 28 August 2009
Gross Weekly Pay: €560.00

These awards are made subject to the appellants having been in insurable employment under the Social Welfare Acts during the relevant period.

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Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

