

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
RP759/2009
WT298/2009

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: Ms. K.T. O'Mahony BL

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard these appeals in Cork on 10 February 2010

Representation:

Appellant:

Mr. Jan Jaroslaw Potocki, Polish English Translation, "Pilawa",
Office 19, 21-23 Oliver Plunkett Street, Cork

Respondent:

No attendance or representation

The decision of the Tribunal was as follows: -

The Tribunal is satisfied that the respondent received proper notification of the hearing of this case.

The appellant sought awards in respect of redundancy and outstanding holidays as his employment which commenced on 27 March 2006 and was terminated when his P45, having a termination date of 1 November 2008, was issued to him. The Tribunal was furnished with a copy of a letter from the respondent to the appellant stating that the appellant's position had to be made redundant as of the end of October 2008. The appellant sustained an injury due to a workplace accident on 17

October 2007 after which he had not been able to work.

Determination:

The effect of paragraph 5 (a) (i) of schedule 3 of the Principal 1967 Act as substituted by section 12 of the 2003 Act is that where an employee's period of service has been interrupted for any period by reason of sickness the employee's continuity of employment is not broken. Accordingly, the Tribunal finds that the appellant had continuity of service with the respondent from the date of his commencement in the employment on 27 March 2006 to 31 October 2008.

The effect of paragraph 8 (a) of schedule 3 of the Principal 1967 Act as substituted by section 12 (b) of the 2003 Act is that absence in excess of 52 consecutive weeks by reason of an occupational accident or disease within the meaning of the Social Welfare (Consolidation) Act 1993 during the 3 year period ending with the date of termination of employment is not allowable as reckonable service. Accordingly, the Tribunal is satisfied, based on the uncontroverted evidence, that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria

Date of Birth: 1 May 1960
Date of Commencement: 27 March 2006
Date of Termination: 31 October 2008
Gross Weekly Wage: €585.00

The period from 15 October 2008 until 31 October 2008 is non-reckonable by reason of the appellant's absence, due to an industrial accident, in excess of 52 weeks.

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

The Tribunal finds that the appellant was entitled to compensation for outstanding holidays despite the fact that he was absent from work due to illness at the time that his employment ended. The Tribunal calculates the appellant's outstanding holiday entitlement at the termination of his employment to be the equivalent of 16.67 days' pay at €585.00 per five-day week. The Tribunal finds that the claim under the Organisation of Working Time Act, 1997, succeeds and makes an award to the appellant in the amount of €1,950.39 (3.334 weeks' gross pay at €585.00 per week) under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)