

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE –*Appellant*

CASE NO.
RP733/2010

against
EMPLOYER –*Respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Carlow on 3rd May 2011

Representation:

Appellant: In Person

Respondent: Mr Nicholas J. Waters, Waters & Associates, Solicitors, Unit 1A
Hyde Court, Shaw Street, Dublin 2

The decision of the Tribunal was as follows:

The respondent conceded that a redundancy situation existed in relation to the termination of the appellant's employment. However, the parties were in dispute regarding the date of commencement of the employment for the purposes of calculating the redundancy payment. It was the respondent's case that employment re-commenced in 2002 but the appellant claimed his employment was continuous from the time of 1999. The Tribunal heard evidence from both parties in relation to this issue.

A director of the company gave evidence that the appellant was first employed as a general operative in 1999. Prior to this the appellant worked on the annual sugar campaign in the sugar factory from in or around October/November. Each year the appellant informed the director that he was going to work on the sugar campaign. When the campaign finished the appellant would telephone the director of the company seeking work. There was no guarantee that work would be available, however each year the director had work to offer to the appellant. The appellant was not replaced during these absences. The respondent company issued a P45 to the appellant each time he went to work on the sugar campaign.

The director stated that the appellant broke his continuous service for the last sugar campaign from 28 September 2001 to when he returned in March 2002. This was the last break in service until the claimant was made redundant on 24 January 2010.

The appellant gave evidence that he had worked on one sugar campaign before he commenced employment with the respondent company. When he commenced employment with the respondent company he informed the director that he would be working on the sugar campaign each year. Each year the appellant would inform the director when the campaign was starting. If there was work available after the campaign with the respondent it was offered to the appellant. The appellant did not consider his position with the respondent company to be in jeopardy by working on the sugar campaign. The appellant did not work on the sugar campaign after 2002, as the sugar factory closed. When the appellant was made redundant he expected the redundancy payment to be calculated from the date he commenced his employment in 1999.

Both parties were in agreement that a lay-off occurred from the time of 6 October 2009 to 24 January 2010.

Determination:

The Tribunal is satisfied from the evidence adduced that the appellant went to work on the sugar campaign with the permission of the director of the respondent company. Such a break can therefore be considered an authorised absence from the employment. The Tribunal determines that the appellant's service be deemed continuous from the time of 1999. The Tribunal finds that the period of lay off from 6 October 2009 to 24 January 2010 is non-reckonable for the purposes of calculating a redundancy lump sum. The Tribunal therefore finds 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:	4 March 1958
Date of Commencement:	1 March 1999
Period of Non-Reckonable Service:	6 October 2009 to 24 January 2010
Date of Termination:	24 January 2010
Gross Weekly Pay:	€638.43

It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.

This award is 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)