

EMPLOYMENT APPEALS TRIBUNAL

| APPEALS OF: | CASE NO. |
|-------------------------------|-------------|
| EMPLOYEE <i>-appellant 1</i> | RP1677/2009 |
| EMPLOYEE <i>-appellant 2</i> | RP1678/2009 |
| EMPLOYEE <i>-appellant 3</i> | RP1679/2009 |
| EMPLOYEE <i>-appellant 4</i> | RP1680/2009 |
| EMPLOYEE <i>-appellant 5</i> | RP1681/2009 |
| EMPLOYEE <i>-appellant 6</i> | RP1682/2009 |
| EMPLOYEE <i>-appellant 7</i> | RP1683/2009 |
| EMPLOYEE <i>-appellant 8</i> | RP1684/2009 |
| EMPLOYEE <i>-appellant 9</i> | RP1685/2009 |
| EMPLOYEE <i>-appellant 10</i> | RP1686/2009 |
| EMPLOYEE <i>-appellant 11</i> | RP1687/2009 |
| EMPLOYEE <i>-appellant 12</i> | RP1688/2009 |
| EMPLOYEE <i>-appellant 13</i> | RP1689/2009 |
| EMPLOYEE <i>-appellant 14</i> | RP1690/2009 |

Against

EMPLOYER *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr J. Browne
Mr T. Kelly

heard this appeal at Clonmel on 24th May 2010

Representation:

Appellant: Mr. Nicholas Parker, SIPTU, Fintan Kennedy Hall, Anglesea Street, Clonmel,
Co. Tipperary

Respondent: Mr Loughlin Deegan, IBEC, Confederation House, 84/86 Lower Baggot Street,
Dublin 2

The decision of the Tribunal was as follows:-

The appeals under the Redundancy Payments Acts 1967 to 2007 were withdrawn for the following appellants;

Appellant 1 - RP1677/2009

Appellant 2 - RP1678/2009

Appellant 3 - RP1679/2009

Appellant 5 - RP1681/2009

Appellant 7 - RP1683/2009

Appellant 10 - RP1686/2009

Background

The appellants were all engaged in seasonal work. Each year the appellants received a new 'specified purpose' contract of employment, which spanned the length of the season, normally August to December. The appellants were issued P45's at the end of each season and paid their statutory holiday and minimum notice entitlements. The respondent maintains that the appellants did not have the continuous service as required by section 7 of the Redundancy Payments Acts as amended to qualify for a redundancy lump sum. The appellants all signed a 'receipt and discharge' stating that *'I confirm that my employment with the company shall terminate with effect (termination date) by reason of redundancy.'*

The appellants are all members of a union that negotiated a collective redundancy agreement in the Labour Relations Commission. The appellants all had the opportunity to vote on this agreement. The agreement was passed and all the appellants received their 'termination payment' as per the terms of this agreement. The payment each of the appellants received is greater than their statutory redundancy entitlement by the respondent's calculation. The respondent made it clear to the appellants that any redundancy lump sum payable would be deducted from the ex-gratia severance payment.

The appellants are bringing this case before the Tribunal as it was agreed that the seasonal workers would except the ex-gratia payment but would also be pursuing their statutory redundancy entitlement. The severance letter issued does not preclude an appeal under the Redundancy Payments Acts 1967 to 2007. The appellants deem their employment to be continuous as they were on lay-off during the period they were not working with the expectation to be re-employed for the following season.

Claimant's Case

JF gave evidence that she commenced employment with the respondent in 1968 and worked a total of 40 seasons. Each season commenced in July or August except for the last three years, which commenced in September and ended in late December. The appellant only received contracts for the last 10 years of her employment. The contracts did not contain a finish date.

Cross Examination

The appellant received her minimum notice, holiday entitlement and P45 on termination of the season each year. The appellant received a termination letter at the end of each season. The appellant wrote to the respondent prior to the season commencing informing them that she was available for work. The appellant did not work anywhere else during the year.

The appellant was aware of the Labour Court Agreement and had the opportunity to vote on it. The appellant did not inform the respondent that she would not be bound by it. The appellant received and signed for an ex-gratia payment of €27,327.86.

JK gave evidence that he commenced employment with the respondent in 1995. The appellant left in 1999 and returned in 2002. The appellant worked a total of 11 seasons with an average of 13 weeks per season.

Cross Examination

The appellant received all his entitlements and a letter of termination at the end of each season. The appellant was aware of and did vote on the Labour Court Recommendation. The appellant explained when he signed the acceptance of the ex-gratia payment for 5 years service that he would be claiming statutory redundancy on the full 11 years service.

Respondent's Case

The respondent submitted all the relevant documentation.

Determination

The Tribunal having carefully considered the evidence tendered in this case and the further written submissions on behalf of the appellants, unanimously find that as the appellants did not have 104 weeks continuous service at the date of their termination of employment. They accepted notice payment and holiday pay at the cessation of every period of employment evidencing a break in service.

Therefore the appeals under the Redundancy Payments Acts 1967 to 2007 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)