

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

-appellant

CASE NO.
RP2460/2009

Against

EMPLOYER

-respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Ms J. Winters
Mr J. Moore

heard this appeal at Drogheda on 17th February 2011

Representation:

Appellant: In Person

Respondent: Donal O'Hagan & Co., Solicitors, Court House Square, Dundalk, Co. Louth.

Background

The fact that a redundancy situation existed within the respondent is not in dispute in this case.

Appellant's Case

In April 2008 the appellant was reduced from a 5-day week to a 2-day week. The appellant occasionally worked 3 days a week depending how busy the respondent was. In January 2009 the appellant's working week was reduced further to a 1-day week. The appellant often asked how long the reduced working hours would last. This arrangement continued until the appellant applied for redundancy on the 30th of June 2009. The appellant gave the respondent the RP9 form and the respondent requested that the appellant wait until July in order to organise the funds to pay his redundancy. The appellant agreed to this. The

respondent and the accountant calculated the appellant's redundancy based on a 2-day week. The appellant queried this calculation but was told it was accurate.

Respondent's Case

The appellant was put on short time on the 24th of April 2008. This continued until he requested redundancy in June 2009. The respondent offered the appellant work in a different, busier area of the respondent. After 2 weeks the appellant stopped, as he was not able for the type of work in the other area of the respondent. The appellant seemed happy with his reduced working hours and never raised it as an issue; he asked on a few occasions if business was improving. The respondent does not dispute that a redundancy situation existed.

Determination

In this case the respondent accepts that a redundancy situation existed. The Tribunal has to decide if the redundancy lump sum is calculated on the Claimant's gross wages for a five day week or a two day week. The appellant was on short time for a little over a year.

It has long been the view of the Tribunal that when an employee is put on short time that is less than half his weekly earnings, and this situation existed for less than a year, the gross wage for the calculation of a redundancy lump sum is based on a full week's pay.

Where an employee is made redundant after working reduced hours for more than a year the calculation of his payment will depend on whether he accepted being on reduced working hours or not. If the employee fully accepted the reduced working hours as his normal working week and never asked to return to full time work then the redundancy payment will be based on the gross pay for the reduced working hours. If on the other hand the employee never accepted the reduced working hours as his normal hours and continuously asked to be put back to his full time hours then it is clear that the employee did not accept the reduced working hours as normal.

The Tribunal is satisfied from the evidence that the appellant never accepted the reduced hours as his normal working week. This is clear from the fact that he often asked how long the reduced working hours would last. Accordingly the Tribunal determines that the gross wage for the calculation of a redundancy lump sum is based on a full week's (five days) pay.

Based on this finding the Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of birth	23 rd July 1951
Date employment commenced	20 th October 1988
Date employment ceased	29 th July 2009
Gross weekly pay	€ 346.00

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)