

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
- *appellant*

CASE NO.
UD1644/2010
RP90/2012

against

EMPLOYER
-respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007
UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. Mac Carthy S C

Members: Mr C. McHugh
Ms. N. Greene

heard this claim at Naas on 31st January 2012

Representation:

Claimant: Mr. Brendan Archbold, 12 Alden Drive, Sutton, Dublin 13

Respondent: Mr. Aidan McGrath, DAS Group, DAS Legal Expenses, 12 Duke Lane, Dublin 2

The determination of the Tribunal was as follows:-

The Tribunal heard that the appellant's normal working hours were 40-48 hours per week. There was an agreed reduction to 36-39 hours per week and on occasion he worked below his contracted hours. From March 2010 his hours reduced substantially.

The employer reduced the hours of work to 36-39 hours per week and this was accepted by the claimant. Later the employer attempted to reduce the hours further but the employee refused to accept this and resigned.

It is settled law that where an employer reduces hours or pay below the contracted amount, the employer is in breach of contract. The employee has the choice to accept or reject that breach, and if he chooses to reject it and resign section 9(1)(c) of the Redundancy Payments Act 1967 applies:

“For the purposes of this Part an employee shall, subject to this Part, be taken to be dismissed by his employer if but only if-

(c) the employee terminates the contract under which he is employed by the employer without notice in circumstances (not falling within subsection (5)) such that he is entitled so to terminate it by reason of the employer's conduct.

The Tribunal is satisfied that the appellant was dismissed by reason of redundancy within the meaning of section 9(1)(c). Accordingly, the Tribunal awards him a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following information:

Date of Birth:	28 th December 1978
Date of Commencement:	15 th June 2007
Date of Termination:	24 th June 2010
Gross Pay:	€495.21
Non Reckonable Service:	Nil
Amount of Redundancy:	€3496.18

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

A ceiling of €600 applies to all payments from the Social Insurance Fund.

The claim under the Unfair Dismissals Acts 1977 to 2007 must fail due to the mutual exclusivity of the Redundancy Payments Acts, 1967 to 2007 and the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)