

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE –**Appellant**

RP600/2011

against

EMPLOYER –**Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr J. Smith
Members: Mr D. Morrison
Ms A. Moore

heard this appeal at Letterkenny on 1 May 2012

Representation:

Appellant:

Mr Paddy Hannigan, Citizens Information Centre,
Public Services Centre, Blaney Road,
Letterkenny, Co. Donegal

Respondent:

No appearance by or representation on behalf of the respondent

The determination of the Tribunal was as follows:

Determination:

Being satisfied that the respondent was properly on notice of the hearing the Tribunal proceeded to hear uncontroverted evidence from the appellant about the circumstances under which his employment came to an end. The appellant, whose position was that he had been employed from 24 August 2005, was placed on a three-day week from 12 February 2009. 24 November 2010 was the last day that the appellant worked for the respondent as on that day the appellant was issued with a letter stating that there was no more work for him. On 21 January 2011 the appellant served form RP9 on the respondent thereby claiming a lump sum payment under the Redundancy Payments Acts.

Subsequently the appellant received a lump sum payment based on a start date of 24 August 2006 and his weekly pay was calculated on the pay he received for working a three-day week.

The appellant's position was that his lump sum payment should have been based on his rate of pay when working a full five-day week. The appellant accepted that there had been two periods of lay-off during the last three years of the employment.

The Tribunal accepts the appellant's evidence that his employment began on 24 August 2005. However in regard to the weekly pay to be used in the computation of the lump sum the Tribunal is satisfied that, because he was on a three-day week for in excess of 52 weeks, from February 2009 until November 2010, he cannot rely on Section 15 (2B) of the Redundancy Payments Acts which provides

“a) Where an employee's remuneration is reduced substantially but not to less than one-half of his normal weekly remuneration, or his hours of work are reduced substantially but not to less than one-half of his normal weekly hours, and

b) the employee temporarily accepts the reduction in remuneration or hours of work and indicates his acceptance to his employer,

such a temporary acceptance for a period not exceeding 52 weeks shall not be taken to be an acceptance by the employee of an offer of suitable alternative employment in relation to him.”

Accordingly, the Tribunal is satisfied that the correct weekly pay was used in the computation of the lump sum.

The Tribunal 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	12 July 1967
Employment commenced	24 August 2005
Employment ended	21 January 2011
Gross weekly pay	€330-00

There were periods of non-reckonable service, by reason of lay-off from 24 December 2008 until 12 February 2009, from 31 December 2009 until 7 April 2010 and from 24 November 2010 until 21 January 2011. .

This award is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period.

The Tribunal is cognisant that the appellant has already received a lump sum payment but based on an incorrect start of employment date and this order is merely to correct the starting date used in the earlier computation.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)