

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

EMPLOYEE - appellant

CASE NO.

RP2975/2010

Against

EMPLOYER - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr C. Corcoran B.L.

Members: Mr J. Horan
Mr. J. Dorney

heard this appeal at Naas on 21st June 2012.

Representation:

Appellant: Mr. Tom O'Dwyer, Membership Information & Support Centre, SIPTU, Liberty Hall, Dublin 1

Respondent: Mr. Paul Dunne, IBEC, Confederation House, 84/86 Lower Baggot Street, Dublin 2

The decision of the Tribunal was as follows:-

Respondent's Case:

The respondent is engaged in metal roofing and cladding and is heavily dependent on the construction industry. The Works Manager SG gave evidence.

The appellant was engaged as a temporary casual worker and had several breaks in his service while working for the respondent. The periods he worked were as follows:

24 July 1996 - 28 December 1996 (break in service being in excess of 26 weeks)
1 December 1997 – 19 December 1997 (break in service being in excess of 26 weeks)
19 August 1998 – 2 January 1999 (break in service in excess of 4.5 months)
19 May 1999 – 3 September 2010

The appellant's calculation for redundancy purposes was based on commencement date of 19 May 1999 and cessation date of 3 September 2010. He received a redundancy package

of €13,944.00. A P45 issued to him after his periods of employment.

His fourth period of employment commenced on 19 May 1999 under a new contract of employment. He received a long service achievement award, being ten years service, which reflected his commencement date of employment to be 19 May 1999.

The respondent's practice was that any break in service greater than three months was automatically considered to be a break in continuity of service (the "three month rule").

The appellant accepted a financial settlement which included his entitlements under the Redundancy Payments Acts and various other Acts. This was done without prejudice to a further appeal to a third party, in relation to the disputed start date. He raised an issue regarding his start date and subsequently disputed the date that was used for his redundancy settlement.

Appellant's Case:

The appellant was employed as a machine operative. He contended that he had several breaks in his service. He was not made aware of the company policy in relation to the "three month rule". He is claiming an additional redundancy lump sum entitlement for a nineteen week period from 19th August 1998 to 18th May 1999.

It was after the appellant received his redundancy entitlement together with other entitlements under various Acts that he contacted his shop steward. The three month rule had never been discussed with the union. It was contended that service was reckonable when a break in service was less than 26 weeks.

Determination:

The appellant had several breaks in service during the course of his employment with the respondent. The appellant worked for the respondent for four separate periods of employment. Between his first and second periods of employment he had a break in service in excess of 26 weeks and likewise between his second and third periods of employment. His third period of employment commenced on 19 August 1998 and ended on 2 January 1999 and his last period of employment commenced on 19 May 1999 and ended on 3 September 2010. Thus there was a break of service of 4.5 months between his third and fourth periods of employment.

The Tribunal finds that the appellant is entitled to an additional redundancy lump sum based on his date of birth of 25th February 1977, his date of commencement 19th August 1998, date of termination 18 May 1999 and gross weekly wage €608.33.

This award is made subject to the appellant having been in employment, which is insurable for all purposes under the Social Welfare Consolidation Act 2005.

It should be noted that a weekly ceiling of €600.00 currently applies to payments from the Social Insurance Fund.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)