

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE

WT380/2011

CASE NO.  
RP1258/2011  
- *appellant*

MN1041/2011

Against

EMPLOYER  
- *Respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr N. Russell

Members: Mr J. Hennessy  
Mr F. Keoghan

heard this appeal at Portlaoise on 11th May 2012

### **Representation:**

Appellant: Mr Peter McNamara, Citizens Information Centre, 27 Main Street, Portlaoise, Co Laois

Respondent: Mr Philip C Meagher, Midland Legal, Solicitors, Fitzmaurice House, Bank Place, Portlaoise, Co Laois

The decision of the Tribunal was as follows:-

### **Appellants Case**

The appellant told the Tribunal that he commenced working for the respondent in June 2006 on a full time basis and continued to work full time for the respondent until his termination of employment on 18<sup>th</sup> March 2011. The appellant went to see the respondent to enquire about his redundancy entitlement and was informed by the respondent that he did not have the funds to pay him his redundancy.

During his employment the appellant never received his full holiday entitlement, he would get

two weeks annual leave per year, one week at Christmas and one week during the summer.

During cross examination the appellant disputed that he ever worked a 3 day week for the respondent and his rate of pay during his employment was always €550, which was made up from the combination of a cheque and cash payment.

### **Respondent's Case**

The respondent told the Tribunal that he employed the appellant to erect sheds for farmers. When work became less available he let go two employees and told the appellant he was placing him on a 3 day week. There was a period of approximately six days when there was no work available, he told the appellant that he might have some work in a few days. The appellant said that he would be better off on the dole and he asked about his redundancy. The respondent told him that he would only get redundancy calculated at the rate of pay for a 3 day week.

The respondent explained that if an employee requested holidays they were never refused but there was one year when the appellant did not take any holidays.

### **Determination**

The respondent in this claim accepts that the claimant was made redundant. There was a complete conflict of evidence, however, as to whether the claimant worked full time or on a three day week basis from early 2009 to March 2011.

The claimant was adamant that there had been no change in his working practice and terms prior to his termination save that he was initially paid by cheque, subsequently by a combination of cheque and cash and ultimately in cash only.

The respondent's case is that the claimant was put on a three day week in early 2009 until March 2011 and paid accordingly by way of cash payment. The evidence of the respondent was that all PRSI etc. was accounted for on this payment.

The Tribunal prefers the evidence of the claimant and, on balance, finds that the claimant worked continuously from June 2006 to March 2011 on a five day week basis receiving a net weekly remuneration of €550 (€655). The Tribunal in arriving at this decision is influenced by the following:-

- The absence of any documents from the Respondent before the Tribunal to verify the level of the claimant's remuneration eg. Contemporaneous weekly payslips, a cash book evidencing the payment of wages from early 2009 to the date of termination or signed receipts for the cash remuneration received by the claimant.
- The fact that the claimant first received Social Welfare payments in March 2011. Had he been placed on a three day week in 2009, it is reasonable to expect that he would have drawn Social Welfare at that time for the days not worked.
- The lack of clarity on the respondent's side as to whether any documents were given to the claimant in 2009 to enable him to make a Social Welfare Claim.

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: 16<sup>th</sup> May 1976  
Date of Commencement: 29<sup>th</sup> June 2006  
Date of Termination: 18<sup>th</sup> March 2011  
Gross Pay: €655

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

The Tribunal awards the appellant €1,310.00, two weeks pay under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

The appellant is entitled to €2,620 in respect of 20 days unpaid annual leave and public holidays in 2010 and 2011, under the Organisation of Working Time Act, 1997,

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

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)