

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE -*Appellant*

CASE NO.
UD1180/2010
RP1609/2010

against
EMPLOYER -*Respondent*

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.
Members: Mr J. Hennessy
 Mr. J. Dorney

heard this claim at Kilkenny on 4th April 2012

Representation:

Appellant: In Person

Respondent: In Person

The determination of the Tribunal was as follows:

Summary of the Evidence

The appellant was employed by the respondent from January 1992. The appellant was placed on a three-day week from 27 September 2008. The appellant was neither satisfied nor accepted the reduced working hours but she conformed to her employer's wishes in this regard. Notice of the change was not provided to her in writing.

The respondent maintained that his business then decreased to such an extent that he could no longer manage to pay a full week's wages. After the appellant had been working a three-day week for over one year, he subsequently spoke to her in October 2009 about reducing to a two-day week. There was a dispute as to when the two-day week took effect. The respondent's position was that it took effect from 12 January 2010. The appellant's position was that the two-day week took effect from 1 December 2009. Both parties confirmed to the Tribunal that there was no discussion between them during the employment regarding the length of time the appellant could expect to be on reduced hours.

The appellant served an RP9 on the respondent on the 5 February 2010 however she continued in her employment on a two-day week until the beginning of her maternity leave in June 2010. The appellant subsequently tendered her resignation at the beginning of April 2011, after the end of her maternity leave. The claims to the Tribunal were received in April 2010.

Determination:

Section 15 of the Redundancy Payments Act as amended by section 11 of the 1971 Act provides that where an employee's hours of work are reduced substantially but not to less than one half of his normal weekly hours and the employee temporarily accepts the reduction and indicates this acceptance to her employer, such a temporary acceptance of the reduction for a period not exceeding fifty two weeks shall not be taken to be an acceptance by the employee of an offer of suitable employment. There had been no discussion between the parties on the issue.

Whilst, in this case, the period of fifty two weeks during which the statutory presumption applies, had expired the Tribunal is satisfied, from the evidence, that the appellant had not accepted the reduced hours as suitable alternative employment and finds that the redundancy payment should be calculated on the basis of a full week's wages.

The appellant served an RP9 on the respondent on 5 February 2010 but continued to work until she subsequently went on maternity leave. The RP9 was therefore served on the respondent over one year before the appellant tendered her resignation in April 2011 at the time that she was due to return from maternity leave.

The Tribunal considers that when the appellant filed an RP9 this was considered to be the end of the contract to work five days per week. There was a dispute as to when the two-day week took effect. The Tribunal, on the balance of probability, accepts the appellant's evidence that the two-day week took effect from 1 December 2009. The appellant then submitted her RP9 more than four weeks later. The Tribunal considers that the appellant commenced a new contract of employment with the respondent from 1 December then.

Accordingly, 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: | 27 August 1971 |
| Date of Commencement: | 15 January 1992 |
| Date of Termination: | 1 December 2009 |
| Gross Weekly Pay: | €371.49 |

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

The Tribunal having found that a redundancy situation occurred dismisses the claim under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)