

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE – *appellant*

CASE NO.
RP2585/2010

against

EMPLOYER – *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Mr. G. Andrews
Ms. H. Henry

heard this appeal at Ennis on 28th September 2011

Representation:

Appellant: Ms. Jane O'Flynn of John Lynch & Company Solicitors,
Bridge House, South Quay, Newcastle West, Co. Limerick

Respondent: Mr. Darren O'Keeffe of James Riordan & Partners Solicitors,
50 South Mall, Cork

The decision of the Tribunal was as follows:-

It was common case that the appellant had been made redundant in 2009. The appellant was paid a redundancy lump sum based on a 3-day working week. She was appealing the amount of this payment contending that her redundancy payment should have been calculated on the basis of a 5-day working week.

Summary of the Evidence

The appellant commenced employment with the respondent in February 1999, on a full-time basis. Following her return from maternity leave in late 2005, the claimant experienced difficulties and

requested a shorter working week. The respondent facilitated her request and from 3 January 2006 she began working a 3-day week. It was part of the agreement between the parties that after an initial 3-month trial period the respondent may terminate the agreement and request her return to full-time employment. The agreement was subject to review. The respondent found this arrangement unsatisfactory. In summer 2006 the claimant agreed with

the respondent that she would try to revert to full-time hours by September 2006. However, she submitted a medical certificate dated 20 July 2006 from her doctor indicating that she was more suited to a 3-day week “for the moment”. The claimant was then absent on sick leave from September to early December 2006, when she returned to work on a 2-day week.

The respondent was not in a position to continue with the claimant on reduced hours indefinitely. The Technical Director met the appellant in mid-February to discuss this with her and gave her two letters dated 19 February 2007: one seeking confirmation from the appellant that she was fit to and would return to full-time hours by 5 March 2007 and the second, confirming to the appellant that she could have 5 weeks’ parental leave from 19 March to 20 April 2007.

On 28 February 2007 the appellant responded to the Technical Director’s letter of 19 February indicating her surprise at the request that she return to work full-time by 5 March and informing her that she had been waiting for the respondent to organise a meeting to discuss the possibility of her returning to full-time hours. The appellant enclosed a letter from her doctor certifying that she was unfit for full-time work for the foreseeable future. In a phone call made by the Technical Director on 7 March 2007, the appellant informed her that she was travelling to Australia and that the 5-week period previously planned as parental leave was to be regarded as sick leave and not parental leave. The appellant went to Australia for 5 weeks from mid-March 2007.

The appellant was on maternity leave from 28 April 2008, followed by unpaid maternity leave until 16 February 2009, followed by parental leave until 28 August 2009. On 25 August 2009 the respondent notified the claimant that her position was being made redundant as and from 11 October 2009. The appellant had not returned to full-time work from the time she went on reduced hours in January 2006 to the time she was made redundant. The appellant accepted that she did not request to return to full time work.

Determination:

As the reduction in the appellant’s hours of work as and from 3 January 2006 was not due to a shortage of work in the respondent company but rather a facility granted by the respondent to the appellant at her request, the provisions of section 15 of the Redundancy Payments Acts have no application in this case.

The claimant went on reduced hours at a proportionately lower salary from 3 January 2006. Despite requests from the respondent over the years the appellant had never reverted to full-time hours. Accordingly, when a redundancy situation arose in 2009 the appellant was not entitled to a redundancy payment based on a 5-day week. Thus, the appeal under the Redundancy Payments Acts 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)