

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP372/2011

against  
EMPLOYER

under

### **REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr. M. Carr

Mr. O. Nulty

heard this appeal at Mullingar on 23rd March 2012

Representation:

Appellant:

Ms Carmel McKeon, Corcoran & McKeon, Accountants,  
No 2 The Oaks, Lakepoint, Mullingar, Co Westmeath

Respondent:

Mr. Michael O'Sullivan, HR Advisor, ARRA HRD Limited,  
Castlelost West, Rochfortbridge, Co Westmeath

### **Respondent's case**

The respondent employed the appellant on a full time basis from February 1998 to April 2008 at which time he began to work on a week on week off basis, working 37.5 hours every other week. The appellant had requested this arrangement as he needed time off and the respondent facilitated that request. Thereafter the appellant never requested to return to full time working and seemed happy to continue on a week on week off basis.

On the 9th of September 2010 the respondent was experiencing a cash flow crisis and had to place all staff on temporary lay-off. The appellant was last employed on that date.

On the 8<sup>th</sup> of October 2010 the appellant requested a redundancy lump sum payment, having already been on 4 weeks lay-off. The respondent then made an offer, in writing, on the same date, of a return to work. This offer was for 12 hours per week for 13 weeks commencing on 13<sup>th</sup> October 2010. The appellant refused this offer of a return to work and the respondent therefore contends that the appellant resigned of his own volition and is not entitled to a redundancy lump sum.

### **Appellant's case**

The appellant agreed that he began to work a week on week off in April 2008 but denied that he had requested such an arrangement. He stated that the respondent was experiencing a downturn in business and that he (the appellant) volunteered to go on a week on week off basis to facilitate the respondent. The appellant never formally requested a return to full time work but understood that this would happen. However the appellant was placed on temporary lay-off from 9<sup>th</sup> September 2010.

On 8<sup>th</sup> October 2010 the appellant requested payment of a redundancy lump sum by giving to the respondent a form RP9. On the same date the respondent offered the appellant a return to work on a 12 hour per week basis. The claimant refused this offer.

This offer of a return to work was on less favourable terms and conditions because it was for 12 hours per week and not the hours he had been working up to the date of lay-off and on this basis the appellant held that he was entitled to a redundancy lump sum.

### **Determination**

The appellant's case was that he had an entitlement to a redundancy lump sum on the basis that, having been on lay-off for a period of at least four weeks, he submitted a form RP9 to the respondent requesting payment and that the respondent did not give him a "counter-notice" in accordance with section 13 (1) & (2) of the Redundancy Payment Act, 1967.

Having carefully considered the evidence adduced at the hearing the Tribunal is satisfied that the appellant's normal hours of work were 37.5 hours per fortnight. The appellant had been working those hours for approximately 17 months and had not requested a return to full time work. Therefore when the respondent offered the appellant, in writing, a return to work for 13 weeks, on a 12 hour per week (24 hours per fortnight) basis, this constituted a "counter-notice" in accordance with section 13 (1) & (2) of the Redundancy Payments Act, 1967.

The Tribunal notes that short time means a reduction in the hours worked to less than half the normal weekly working hours. Therefore the appellant would not have been on short-time or lay-off for the 13 weeks offered by the respondent. Accordingly the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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