

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP1341/2011

against
EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. L. Ó Catháin

Members: Mr. P. Casey

Mr. J. Flavin

heard this appeal at Cork on 18th May 2012

Representation:

Appellant:

Mr Dick Hurley, UCATT, 56 Parnell Square West, Dublin 1

Respondent:

P.J. O' Driscoll & Sons, Solicitors, 41 South Main Street, Bandon, Co. Cork.

Appellant's case

The appellant brought the appeal to the Tribunal because he was paid a redundancy lump sum based on a reduced working week, which he had been working prior to the redundancy. However, it was the contention of the appellant that the calculation for redundancy ought to have been based on his normal wage prior to going on short time working or reduced hours.

The appellant commenced employment with the respondent on 20th September 2000 and was made redundant on 29th March 2011. He had been on a short-time working week since 15th February 2010 and was placed on temporary lay-off from 24th February 2011. The appellant lodged a form RP9 with the respondent on 25th March 2011 requesting payment of a redundancy lump sum. The respondent then paid the appellant a redundancy lump sum based on an average of the hours worked from 9th April 2010 to 1st April 2011. However the appellant gave evidence that he had been paid at least one full week's wages during August 2010 and therefore the short-time working had ceased and recommenced less than 12 months before he was made redundant. The appellant also stated that he was always available to return to full time employment and expected to be put back on a full week at all times. He did not accept that this normal working week was the reduced hours and saw those hours as being temporary.

Respondent's case

The respondent's case was that the appellant was on reduced hours of working for two separate periods, the latest being from 15th February 2010. Therefore, as he was on reduced hours for more than 12 months prior to redundancy, the lump sum was correctly calculated based on an average of his hours over a 52 week period.

A witness for the respondent stated that the claimant may have received a full week's wages on certain weeks during those 52 weeks but that was because the pay week did not run from Monday to Friday. Therefore the appellant may have worked a full "Pay Week" but not a full "Working Week". This witness also stated that she had phoned the appellant on occasion and that he had refused work.

Determination

Having carefully considered the evidence adduced at the hearing the Tribunal is satisfied that the appellant never accepted the reduced working week as his normal week. Therefore the redundancy lump sum should have been calculated based on his normal 39 hour week and the Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria but less €7,316.67 already paid to him.

DOB	30 th January 1982
Commencement Date	20 th September 2000
Lay-off	24 th February 2011 to 29 th March 2011
Date notice received	24 th February 2011
Termination date	29 th March 2011
Gross pay	€592.00

This award is made subject to the claimant having been in insurable employment, during the relevant period, in accordance with the Social Welfare Acts.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)