

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE            -*Appellant*

CASE NO.  
RP1980/2011  
MN1547/2011

against

EMPLOYER            -*Respondent*

under

**REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**  
**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr S. Mahon

Members: Mr P. Pierson  
              Mr O. Nulty

heard this appeal at Longford on 11th May 2012

### **Representation:**

Appellant: Mr. Gerard Carthy, Connellan, Solicitors, 3 Church Street,  
Longford, Co Longford

Respondent: Joan Devine & Co. Solicitors, Bridge Street, Strokestown, Co. Roscommon

### **The decision of the Tribunal was as follows:**

The issue between the parties related to the calculation of the appellant's redundancy payment.

It was the appellant's case that he was placed on reduced working hours effective from the 9<sup>th</sup> February 2009. A director of the company gave evidence to the Tribunal that at that time there was an expectation that business would improve but this did not transpire. The appellant was subsequently placed on lay-off from the 13<sup>th</sup> January 2011. It was the appellant's case that in the interim period he did not accept the reduced working hours as his normal working hours and that while he agreed to reduced working hours on a temporary basis, he continued to seek a return to full-time employment. It was the appellant's evidence that there were discussions with the director of the company about the business in general and about a return to full-time hours. Despite this the appellant remained on a three-day week until the time of lay-off in January 2011, albeit with the occasional five day week.

In March 2011, the appellant met with the director of the company and enquired about the

possibility of a return to work but at that time the director of the company did not know if or when work might become available. It was the director's evidence that it would not have been possible to return the appellant to a five-day week. Although the appellant enquired and there were some discussions around this matter, the director was not in a position to say when or if full-time work would be available. The appellant was provided with five days work per week, when possible.

The appellant subsequently served form RP9 on the respondent company on the 21<sup>st</sup> March 2011. The director of the company completed it and returned it to the appellant but a dispute arose between the parties when the respondent based the appellant's redundancy payment on a three-day week.

**Determination:**

The Tribunal finds that there was a notion of acquiescence on the part of the appellant in relation to the reduced working hours and that he failed to act within an appropriate time frame in seeking a return to full-time employment.

The Tribunal finds that the redundancy lump sum payment should be based on the following criteria:

Date of Birth:	20 <sup>th</sup> May 1972
Date of Commencement:	29 <sup>th</sup> October 1996
Period of Non-Reckonable Service:	13 <sup>th</sup> January 2011 to 21 <sup>st</sup> March 2011
Date of Termination:	21 <sup>st</sup> March 2011
Gross Weekly Pay:	€330.38

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

The Tribunal finds that the appellant is entitled to the sum of €1,982.28 being the equivalent of six weeks wages under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, as the RP9 was not finalised due to the dispute between the parties.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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