

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM OF:**

EMPLOYEE

- *Claimant*

**CASE NO.**

RP1008/2011

UD725/2011

MN780/2011

WT298/2011

Against

EMPLOYER

- *Respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007  
UNFAIR DISMISSALS ACTS, 1977 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. E. Kearney

Members: Mr J. Browne  
Ms S. Kelly

heard this claim at Portlaoise on 30th October 2012

**Representation:**

Claimant: In Person

Respondent: Anne Manning, Breen Manning Solicitors, Towerhill, Portlaoise, Co. Laois

The determination of the Tribunal was as follows:-

The claimant withdrew her claim under the Unfair Dismissals Acts, 1977 to 2007.

The Tribunal heard evidence from both parties who agreed that a redundancy situation existed. The respondent operated a café and employed the claimant from September 2006.

There was a conflict of evidence in respect of a break in service and how this affected the claimant's entitlement to a redundancy payment. The respondent closed the café at Christmas time in 2007 to move premises and did not reopen until February 2008. The respondent told the Tribunal that the café reopened in February 2008 but the claimant did not recommence work until September 2008. The claimant could not remember exactly when she returned to work.

In November 2010 the claimant's hours of work were reduced to 1 day per week. This continued until January 2011 at which stage the claimant submitted an RP9 form to the respondent.

The claimant was also seeking payment for holidays and public holidays in respect of her employment with the respondent. The respondent told the Tribunal that the claimant received €28.45 per week in respect of her annual leave entitlement. The claimant accepted that she received this payment weekly but was not happy with this arrangement and made the respondent aware of same. The claimant explained that she did not receive a payment in respect of her public holiday entitlement.

### **Determination**

Based on the evidence submitted at the hearing of the above case the Tribunal is satisfied that a genuine redundancy situation existed and awards the claimant a lump sum under the Redundancy Payments Acts 1967 to 2007 based on the following criteria:

Date of Birth:	18 <sup>th</sup> November 1979
Date of Commencement:	10 <sup>th</sup> September 2008
Date of Termination:	28 <sup>th</sup> January 2011
Gross Pay:	€282.83

This award is made subject to the appellant having been in employment which is insurable for all purposes under the relevant Social Welfare Acts.

The Tribunal dismiss the claim under the Minimum Notice and Terms of Employment Acts 1973 to 2005 because an employee who claims and receives a redundancy payment in respect of lay off or short time is deemed to have voluntarily left his/her employment and therefore not entitled to notice under the Minimum Notice and Terms of Employment Acts, 1973 to 2001.

It was agreed between both parties at the hearing that the claimant received payment in respect of her annual leave entitlement under the Organisation of Working Time Act, 1997. The Tribunal awards the claimant €56.56 in respect of her public holiday entitlement under the Organisation of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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