

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE *-appellant*

CASE NO.
RP2108/2011
MN1642/2011

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

Members: Ms M. Sweeney
Ms S. Kelly

heard this appeal at Limerick on 4th December 2012

Representation:

Appellant: Mr. Gerard Kennedy, SIPTU, 4 Church Street, St John's Square, Limerick

Respondent: In person

It is agreed by both parties that the appellant's employment ended by way of redundancy. The appellant's redundancy lump sum was calculated by the respondent based on a 3-day week, the appellant maintains it should have been calculated based on a 5-day week. The appellant signed the RP50 form and accepted his redundancy lump sum payment.

Due to a shortage of work the appellant was put on a 3-day week in November 2008. He remained on a 3-day week until his employment was terminated in June 2011. The respondent maintains that they offered the appellant a full-time position in March 2011 but the appellant declined the offer, as it suited his personal circumstances to work a 3-day week. This is strongly disputed by the appellant. The appellant maintains that as he was not furnished with new terms and conditions of employment reflecting his reduced working hours his redundancy should have been calculated based on full-time hours as per his existing contract of employment. The appellant accepted voluntary redundancy and was informed prior to his accepting that his redundancy would be based on a 3-day week. The appellant disputes that it was a voluntary redundancy or that he was informed that the calculations were based on a 3-day week. The appellant regularly asked when he would be put back on a 5-day week.

Determination

Section 15 of the Redundancy Payments Acts as amended provides:

‘ Where—

(a) an employee's remuneration is reduced substantially but not to less than one-half of his normal weekly remuneration, or his hours of work are reduced substantially but not to less than one-half of his normal weekly hours, and

(b) the employee temporarily accepts the reduction in remuneration or hours of work and indicates his acceptance to his employer,

such a temporary acceptance for a period not exceeding 52 weeks shall not be taken to be an acceptance by the employee of an offer of suitable employment in relation to him.’

The employee was on reduced hours for over two and a half years, well over the 52-week period mentioned in section 15 above. The Tribunal finds that the appellant's lump sum payment was correctly calculated. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

The Tribunal is satisfied that the claimant received his full entitlement to notice at the correct rate of pay. Accordingly, the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)