

## **EMPLOYMENT APPEALS TRIBUNAL**

APPEAL(S) OF:  
EMPLOYEE 1 - first appellant

CASE NO.  
RP1851/2011

and

EMPLOYEE 2 - second appellant

RP1852/2011

against

EMPLOYER

under

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

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. D. Hegarty  
Mr. O. Wills

heard this case in Cork on 8 November 2012

Representation:

\_\_\_\_\_

Appellant(s):

Mr. Noel Murphy, Independent Workers Union,  
55 North Main Street, Cork

Respondent(s):

Mr. David Gaffney, Coakley Moloney, Solicitors,  
49 South Mall, Cork

The decision of the Tribunal was as follows:-

The first appellant claimed that his employment, which commenced on 27 January 2006, ended by reason of redundancy on 10 June 2011. His gross weekly pay was claimed to be €635.18 (€438.60+196.58).

The second appellant claimed that his employment, which commenced on 30 June 2008, ended by reason of redundancy on 27 May 2011. His gross weekly pay was claimed to be €554.43 (€420.24 +€134.19).

The respondent did not dispute the appellants' entitlement to redundancy lump sum payments but contended that the gross weekly pay figures claimed by them included as a second component expenses which were not to be reckoned as wages. This second component was allowable by Revenue and was not taxed; it was expenses payable only to drivers and not to depot workers. The appellants maintained the second component was a regular bonus or allowance.

**Determination:**

The Tribunal considered the definition of wages in the Payment of Wages Act, 1991. Section 1 defines wages as including "any sums payable to the employee by the employer in connection with his employment including - any fee, bonus or commission, or any holiday, sick or maternity pay, or any other emolument, referable to his employment, whether payable under his contract of employment or otherwise and the section specifically excludes 'any payment in respect of expenses incurred by the employee in carrying out his employment' shall not be regarded as wages for the purposes of this definition." The Tribunal is satisfied that the second component of the payment to the appellants was not wages but expenses on which tax was not paid.

Accordingly, the Tribunal finds that the appellants' entitlements under the Redundancy Payments Acts, 1967 to 2007, are as follows:

The first appellant is entitled to a redundancy lump sum based on the following criteria:

Date of birth:	27 January 1962
Date of commencement:	27 January 2006
Date of termination:	10 June 2011
Gross weekly pay:	€438.60

The second appellant is entitled to a redundancy lump sum based on the following details:

Date of birth:	28 August 1976
Date of commencement:	30 June 2008
Date of termination:	27 May 2011
Gross weekly pay:	€420.24

The Tribunal awards the appellants lump sum redundancy payments based on the above criteria with reductions, in the amount of redundancy payments already paid to each appellant arising from his redundancy in the summer of 2011.

**Note:** These awards are made subject to the appellants having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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