

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP2490/2011

- *appellant*

against

EMPLOYER *respondent*
under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr G. Hanlon

Members: Mr A. O'Mara
Mr G. Whyte

heard this appeal at Drogheda on 6 November 2012

Representation:

Appellant:

Respondent:

The decision of the Tribunal was as follows:

Background:

The appellant was employed as a crane driver with the respondent company from 13 March 1999 to 19 September 2011. With a decline in business all staff were put on short time on 2008. The appellant was on short time from 7 July 2008 to 19 September 2011. Originally he was working a 3 day a week which was then reduced to 1 day a week.

In mid 2011 a Labour Court case was taken between the union, on behalf their members, and the respondent concerning redundancy terms, honouring contracts of employment and pay reduction. On 20 July 2011 a recommendation was issued the stating:

"Redundancies:

The Court recommends that the Company increase the redundancy terms on offer to statutory entitlements plus the employer's rebate.

Volunteers:

The Company should then seek volunteers from amongst the workforce for the four redundancies contemplated at this time either together or in stages.

Guaranteed Work:

After giving effect to those redundancies, the Company should increase the guaranteed number of days' work for each of the remaining employees from four to six days per month.

Pay:

The Court recommends that the hourly rate of pay be adjusted to € 15 per hour for all hours worked on any five or six days Monday to Saturday worked each week. A premium of 20% should apply to all work performed on Sundays."

This recommendation was agreed by the respondent and after extensive negotiations with the union was accepted by both parties in October 2011.

On 19 September the appellant attended the respondents' office. The two Directors (TOR and MOR) were in the office. A short meeting took place between the three present.

The conflict between the two parties is if the appellant resigned or was made redundant.

Appellant's Position:

The appellant stated that he had asked TOR and MOR if he was to return to his full time contract hours and was told it could not be done. He asked if he would be made redundant and was informed it could not be done. He told them he would look into the matter himself.. He never told them he was resigning.

A letter dated 20 September 2011 was sent to the appellant confirming his resignation with immediate effect. The envelope also enclosed his P45, his payslip detailing all monies owed and thanking him for his years work. The following day he completed an RP9 to apply for a redundancy payment. The following day he received a letter from the respondent returning his RP9 form. The letter stated that as he had resigned 3 days previously he would not be entitled to a redundancy payment.

When asked why he had not contacted the respondent to clarify the matter he told the Tribunal that he had been advised to apply for a redundancy payment through the Employment Appeals Tribunal. There was no letter of resignation produced.

Respondent's Position

TOR gave evidence. He stated that he and his brother (MOR) were surprised the appellant had come to the office on 19 September 2011. The appellant informed them that he felt the company did not seem to have a future and that he wanted to leave. TOR stated that they felt the appellant had another job to go to. MOR suggested that it might impact on his claim he might have for redundancy but the appellant assured them it was not the case. The appellant did not mention a redundancy payment but had requested to return to full time working hours but was informed it was not a possibility. He requested his P45 straight away.

When asked he stated the letter of 23 September 2011 was an accurate account of the short

meeting. No other employee submitted, nor their union, submitted an RP9 form to request a redundancy payment. The appellant was not replaced

Determination:

The Tribunal have carefully considered the sworn evidence adduced in this matter. The Tribunal is satisfied that the appellant's employment was terminated by way of redundancy. Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 is allowed and the appellant is awarded a statutory lump sum payment under those Acts based on the following:

Date of Birth:	31 December 1970
Date of Commencement:	13 March 1999
Date of Termination:	19 September 2011
Appellant on Short Time:	7 July 2008 to 19 September 2011
Gross Weekly Wage:	€ 820.56

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

A statutory weekly ceiling of € 600.00 applies to payments from the Social Insurance Fund

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)