

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE

UD1270/2011

RP1687/2011

MN1376/2011

WT518/2011

Against
EMPLOYER

under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Kearney
Members: Mr. J. Hennessy
Mr. F. Dorgan

heard this claim at Thurles on 29th January 2013

Representation:

Claimant:

Mr. Michael Shinnick, Shinnick Fitzgibbon & Co, Solicitors,
Baldwin Street, Mitchelstown, Co Cork

Respondent:

Mr Ken Molan, John Molan & Sons, Solicitors,
Cork Street, Mitchelstown, Co. Cork

Claimant's case

At the outset the claimant withdrew his claims under the Unfair Dismissals Acts, 1977 to 2007 and the Organisation of Working Time Act, 1997.

The claimant commenced employment with the respondent as an apprentice on 6th September 2004 and became a qualified electrician in late 2009. After qualifying the claimant continued to work for the respondent but sometime in the early part of 2010 he was placed on a Short-Time working week. On 3rd March 2011 the claimant informed the respondent that he wished to be paid a redundancy lump sum as he was no longer willing to work on a short-time basis. There was no offer of a return to full time work and the respondent offered to pay the claimant a

redundancy lump sum based on his earnings while on short-time. The claimant refused this as he felt he was entitled to be paid at his full-time rate.

Respondent's case

The respondent told the Tribunal that he handed over the responsibility for arranging the redundancy payment to his accountant who told him that the claimant was only entitled to be paid a redundancy lump sum based on his short-time earnings. The respondent was of the opinion that the claimant was not entitled to any redundancy payment at all because the claimant had sought such payment himself.

Determination

Having considered the evidence adduced the Tribunal is satisfied that the claimant was on a short-time working arrangement for at least four weeks prior to his request for payment of a redundancy lump sum. The respondent did not make any offer of a return to full-time work and therefore ought to have paid the claimant a redundancy lump sum in accordance with statute.

It is the normal practice of the Tribunal to award redundancy based on a claimant's earnings prior to him/her going on Short-Time. Therefore the Tribunal makes an award to the claimant under the Redundancy Payment Acts, 1967 to 2007 based on the following criteria.

DOB	4 th September 1986
Commencement Date	6 th September 2004
Date notice received	N/A
Termination date	13 th March 2011
Gross pay	€760.00 per week

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

It should be noted that any payment made through the Social Insurance Fund is calculated on the basis of maximum earnings of €600.00 per week.

As the claimant notified the respondent of his intention to claim a redundancy lump sum he is not entitled to receive minimum notice or payment in lieu thereof from the respondent and therefore his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)