

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
RP2615/2011

against

EMPLOYER

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Harrington

Members: Ms. M. Sweeney
Ms. H. Kelleher

heard this appeal in Cork on 28 February 2013

Representation:

Appellant(s):

Respondent(s):

The decision of the Tribunal was as follows:-

A redundancy appeal was lodged with the Tribunal in respect of an employment as a sales assistant from November 2007 to late October 2011. It was alleged that the appellant's working week was reduced by more than fifty per cent for a period from February 2011 to October 2011 whereupon the appellant asked for his redundancy only for the respondent to refuse and yet also fail to provide thirteen weeks of continuous employment.

The respondent's defence was that the appellant had been placed on short-time (twenty hours per week) because of overstaffing resulting from the downturn in the economy. The appellant was chosen because his performance was poor in comparison with others working in his department. The respondent spoke to him and he was in agreement with these reduced hours. The appellant worked the said hours without any problem over a number of months. His contract stated that the respondent could put an employee on short time.

On 23 September (2011) the respondent received a redundancy form (RP9) from the appellant.

The respondent offered him additional hours. This entailed a combination of different hours over different days but the minimum would be thirty-two hours per week. Although the respondent made several different offers of long-term additional hours none were accepted.

On 1 June 2011 the respondent had had to make the hard decision to reduce by fifteen per cent the wages of every employee. This decision had to be made to enable the respondent to trade into the future. Therefore, the respondent was not in a position to reinstate the appellant's pay back to before the beginning of June. The massive reduction in sales had had a serious impact on the respondent to the extent that action had to be taken.

Having heard sworn testimony from the appellant and from the respondent's principal, the Tribunal felt that the respondent had done enough to cover all bases after the redundancy form (RP9) had been served on it but that the appellant had moved too eagerly to end his employment and try to secure a redundancy lump sum rather than taking the respondent's best offer in terms of hours and remuneration at a difficult economic juncture.

The Tribunal is satisfied that the employer gave a counter-notice within the meaning of the Redundancy Payments Acts the effect of which was to take the employee off short-time. Accordingly, the Tribunal decides that the employee is not entitled to a redundancy payment.

The Tribunal is unanimous in finding that the appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)

