

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

EMPLOYEE

RP2885/2011

appellant

Against

EMPLOYER

EMPLOYER

under

respondent

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath B.L.

Members: Mr C. Lucey
Ms. E. Brezina

heard this appeal at Dublin on 9th April 2013

Representation:

Appellant(s):

Respondent(s) The respondent in person

The decision of the Tribunal was as follows:-

Appellant's Case

The appellant told the Tribunal that he commenced employment with the respondent in May 2004. His employment was uneventful until 2010 when a farm manager told him that he had work for him until the end of 2010 and that he would then get fired. He understood that there was a reduction in work and the respondent company had financial difficulties. In the last year of his employment he worked three days a week and prior to that he worked forty hours per week and some weeks he worked fifty two hours. He did not ask for his employment to be terminated.

He continued to live at a house on the farm until April 2011. He then moved to another location and he returned to Poland in June 2011.

Respondent's Case

PR for the respondent told the Tribunal that the appellant commenced work with the respondent in 2004. The appellant was employed until the end of 2010 and he was a good worker. He was paid €240.00 per week in the last year of his employment. He was paid in cash and bank transfers in 2005 and he did not receive payslips.

Due to financial pressure the appellant was offered a three day week in November 2009. At the end of 2010 he was informed that the appellant was returning to Poland but that he would like to remain in the flat on the farm. The respondent had four employees at this time. He did not dismiss the appellant and he was always available to speak with him. On occasion the appellant brought friends to interpret for him if he needed to speak to him. He was surprised when the appellant took a case against him.

The appellant was issued with a P45 dated 31st December 2010 which he received on the 27th February 2011. The appellant was replaced at the end of 2010 and he was paid a minimum wage. The appellant told a manager that he was leaving the respondent but he did not give the exact date.

He did not have any contact with the appellant in January/February 2011. If the appellant had any major issues he could have reported to him.

Determination

The Tribunal has carefully considered the evidence adduced. The appellant is looking for the payment of statutory redundancy on foot of the termination of his employment at the end of December 2010.

The appellant commenced employment with the named respondent as a farm hand on their farm in North County Dublin in May 2004.

Towards the end of 2009 the appellant was put on short time (a three day week) as a result of the downturn in the economy.

The appellant's salary was consequently reduced from €680.00 gross to €240.00 gross although the appellant was also in receipt of Social Welfare Supplement entitlements as is allowed for where short time is in operation.

There was a direct conflict in evidence as to what the parties understood happened at the end of 2010. The employer is adamant that he did not make the appellant redundant. The employee says he understood he was made redundant.

Where an employee is on short time it is open to this employee to declare himself made redundant at the end of 13 weeks of short time. This entitlement holds 52 weeks into the operation of short time and this Tribunal finds that the appellant opted to operate his entitlement to declare himself redundant.

The appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria:

Date of birth	16 th September 1954
Date employment began	17 th May 2004
Date employment ended	31 st December 2010
Gross weekly pay	€240.00

This award is made subject to the appellant 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)

