

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE *-appellant*

CASE NO.
RP83/2012

Against

Department of Education And Science, Special Education Section, Department Of Education
And Science, Cornamaddy, Athlone, Co. Westmeath *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K. T. O'Mahony B.L.

Members: Mr J. Hennessy
Mr F. Dorgan

heard this appeal at Thurles on 14th March 2013

Representation:

Appellant: In Person

Respondent: In Person

Summary of Evidence

An arrangement (The Arrangement) was reached at national level on the terms of the redundancy payment to be paid by EMPLOYER (the Department) to special needs assistants (SNAs) in primary and secondary schools. The terms of The Arrangement were contained in Circular 0058/2006 (Redundancy Arrangements for Special Needs Assistants) which was posted to all schools in 2006. The terms of The Arrangement provided for an enhanced payment of four weeks' pay for every year of service as well as a bonus week for SNAs with more than one year's continuous service. The Arrangement also provided for a partial redundancy lumpsum payment on a pro rata basis to SNAs losing full-time status. Under the terms of the Agreement an application for a lump sum payment has to be submitted to the Department within 52 weeks after the date of the termination (or the change to part-time status) of the SNA position. There is no provision in circular 0058/2006 for extending the time for submitting an application.

The appellant worked as an SNA in a primary school ****(the school)* from 02 November 2002 to 31 August 2011. On 26 April 2010 the appellant's hours were reduced from full-time to part-time. In a telephone call to the Department on 31 March 2010 about her rate of pay

she asked the clerical officer if there was anything she needed to attend to and was told, 'No'.

Some 16 months later, on 31 August 2011, the appellant's position was made redundant. During a telephone conversation about her redundancy with a clerical officer in the Department the claimant was asked if she had applied for partial redundancy. This was the first the appellant had heard about partial redundancy. The appellant then submitted her application for a partial redundancy on 28 June 2011 but the payment was refused on the basis that the time limit for making such application had expired on 26 April 2011, some two months earlier. The appellant contended that her failure to apply in time was due to the failure, of the clerical officer in the Department, to inform her about her entitlement to a partial redundancy payment during her phone call with the officer on 31 March 2010. The position of the school principal was that she had not received Circular 0085/2006 and that neither she nor the appellant was aware of the arrangement for partial redundancy.

The claimant received a redundancy payment of over €11,274.94 in April 2012 under the enhanced redundancy scheme but this payment was calculated based on her part-time hours for the entirety of her service in the school. Her appeal before this Tribunal is in respect of what is termed 'partial redundancy'.

Determination

The Tribunal has jurisdiction to deal with claims for a redundancy payment within the provisions of the Redundancy Payments Acts 1967 to 2007. Under the statutory scheme the entitlement is two weeks pay for each year of service as well as one additional week for employees having two years continuous service with the employer at the time of the dismissal and while the time limit for lodging such an appeal with the Tribunal is 52 weeks this may be extended to 104 weeks where there is reasonable cause for the delay in initiating the appeal. Under the statutory scheme there is provision for awarding a redundancy payment in cases of short-time which occurs where either the employee's weekly remuneration or weekly hours worked is reduced to *'less than one-half'* of the normal weekly remuneration or weekly hours of work. While other conditions have to be satisfied to be entitled to succeed in such an appeal the Tribunal does not have to consider those as neither the appellant's weekly hours nor weekly remuneration was reduced to *less than half* as required under the statutory scheme. Accordingly, the appeal under the Redundancy Payments Acts 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)