

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE – **Appellant**

RP1301/2009

against

EMPLOYER – **Respondent**

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. D. MacCarthy S.C.

Members: Mr. E. Handley
Ms. M. Maher

heard this appeal at Dublin on 7 April 2010

Representation:

Appellant:

In person

Respondent:

Ms. Theresa Howlett, Meagher Solicitors,
8 Exchange Place, IFSC, Dublin 1

The determination of the Tribunal was as follows:

Determination:

This was a case where there was a dispute between the parties over the normal weekly remuneration of the appellant for the purposes of the Redundancy Payments Acts. There was no dispute over the fact of redundancy and the term of the employment. The respondent, which operates a radio station, employed the appellant from 1 November 1996 as an on-air presenter. The appellant presented two two-hour evening slots a week on both Friday and Sunday nights. The employment was uneventful until 13 June 2008 when the programme director (PD) wrote to the claimant to tell her that the Friday night show was being cancelled with immediate effect. The appellant received two months pay in lieu of notice for the ending of the Friday show.

The appellant continued to present the Sunday show until 19 December 2008 when the chief executive (CE) wrote to the appellant to tell her that respondent had decided to cancel the Sunday

show as after the show on Sunday 21 December 2008. The appellant received a lump sum payment under the Redundancy Payments Acts based on her rate of pay received from 14 June until 21 December 2008, that is the rate she was paid for the Sunday show.

The respondent's position was that the ending of the Friday show was in no way a temporary situation and that the appellant accepted the ending of the Friday show by continuing the Sunday show with no complaint to the respondent. This was reinforced by her acceptance of the notice pay in lieu of the closure of the Friday show.

The appellant's position was that she had never said that she was accepting the ending of the Friday show.

Section 15 (2B) of the Redundancy Payments Acts provides: -

"Where -

- (a) an employee's remuneration is reduced substantially but not to less than one-half of his normal weekly remuneration, or his hours of work are reduced substantially but not to less than one-half of his normal weekly hours, and*
- (b) the employee temporarily accepts the reduction in remuneration or hours of work and indicates his acceptance to his employer,*

such a temporary acceptance for a period not exceeding 52 weeks shall not be taken to be an acceptance by the employee of an offer of suitable employment in relation to him."

Section 7 (2) (b) of the Redundancy Payments Acts provides: -

"For the purposes of subsection (1), an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to -

- (b) the fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish,"*

The Tribunal is satisfied that the redundancy of the appellant arose in a two-stage process begun in June and completed in December 2008, this situation was *res gestae*. The Tribunal is further satisfied that the reduction in the appellant's hours in June 2008 was a temporary situation on the way to her position being declared redundant with the ending of her Sunday show. Accordingly the Tribunal finds that, for the purposes of the Redundancy Payments Acts, the normal weekly remuneration of the appellant is the rate of pay being received before the ending of the Friday show in June 2008.

The Tribunal therefore finds that 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	26 November 1943
Employment commenced	1 November 1996
Employment ended	30 January 2009
Gross weekly pay	€640-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period. It should be noted that payments from the social insurance fund are limited to a maximum of €600-00 per week

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)