

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:

CASE NO.

Employee

RP250/2008

Against

Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. D. Winston
Mr. N. Broughall

heard this appeal at Dublin on 10th June 2008

Representation:

Appellant(s): The appellant in person

Respondent(s): Mr. Paul Gough, Eugene F. Collins, Solicitors, Temple
Chambers, 3 Burlington Road, Dublin 4

The decision of the Tribunal was as follows:-

Respondent's Case

The financial director of the respondent told the Tribunal that the appellant told him that he was going travelling in September 2004. A number of employees had previously done that. The appellant left in mid October 2004. It was not the respondent's policy to grant career breaks. It did not believe in giving career breaks and it could not determine that it would have work in six months to two years. The appellant returned from his travels in September 2005 and contacted the office to establish if it had any vacancies. The respondent had a residential project to undertake at this time. They discussed terms and it was agreed that the appellant would return. The appellant was given a company laptop. Prior to the appellant going travelling there was no commitment given that he would be taken back. The nature of the business fluctuated. The respondent could not guarantee work and the appellant did not contact the respondent while on his travels.

In cross-examination he stated that he did not verbally agree to the appellant going on a career

break. He could not run a business in that manner. Due to the nature of the business he could not give a commitment that he would have work available. The appellant was a very good and conscientious worker. If he had agreed a verbal agreement with the appellant, the appellant would have requested it in writing as well. He reiterated that he did not give a verbal or written agreement to the appellant.

Appellant's Case

The appellant told the Tribunal that he was not paid redundancy from an eighteen-month period between 19 May 2003 to 15 October 2004. He was given verbal consent for a career break. It was agreed that his role would remain open during his twelve-month career break and he recommenced with the respondent on 19 September 2005. He contacted his employer in August 2005 that he was returning home. He returned to the office for an informal discussion regarding an earlier recommencement date, this was not an interview. He started work two weeks later in the same position and he did not have to serve a probationary period. It was verbally agreed that he would take a career break. He did request a written letter outlining that he was going on a career break but his employer felt that this would not be necessary.

In cross-examination he stated that he was informed that he was going to be made redundant on 30 January 2008. He left the respondent on 27 February 2008. Asked if he had an e-mail, which he sent to the financial director in August 2005 that he was going to return he replied that he did not have it. Asked that if he was on a career break for one year and that he had nothing to indicate that he would be allowed to return to the respondent he replied that he did ask for a letter and he was told that it would be fine when he returned. He knew of other colleagues who went to Australia but he did not know if it was on a career break. These colleagues returned to Ireland to work but not with the respondent company. He was not aware of anyone in the company taking a career break. Before he left the respondent he informed the respondent that he was going away for a year and he made known his interest in working there again. He expected that the job would be there for him and he trusted that would be the case when he returned.

Determination

The appellant was clearly of the view that a career break was agreed with his employer. However the Tribunal are of the view that while his employer may have discussed with him his return this was done in an informal and casual manner and subject to availability of work. Work was available and he was re-employed under different terms. This was because work was available as opposed to his being promised re-engagement. The appeal under the Redundancy Payments Acts, 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

