

EMPLOYMENT APPEALS TRIBUNAL

Appeal Of:
Employee

Case No.
RP529/2008

against
Employer

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. B. Garvey B.L.

Members: Mr. J. O'Neill
Mr. C. Ryan

heard this appeal at Dublin on 10th October 2008

Representation:

Appellant: In person

Respondent: Mr. Rory White B.L. instructed by Mr. Alan O'Driscoll, Patrick G. Flynn, Solicitors,
26 Pembroke Street Upper, Dublin 2

The decision of the Tribunal was as follows:

Respondent's Case:

The first witness was the respondent's Service Manager (hereinafter SM) from April 2004 to September 2006. In May 2005 the appellant tendered his resignation to SM. The appellant informed SM that he was going to Australia. SM accepted the appellant's resignation. The appellant did not raise the issue of a career break.

SM met the appellant at the respondent's premises approximately one year later. SM was of the impression that the appellant was waiting for SM to offer him a position. SM did not offer the appellant a position, as there was no position open at that time.

One month later the appellant formally asked SM for a position. In the appellant's absence an After Sales Manager (hereinafter ASM) was appointed. ASM was now SM's manager. ASM was also responsible for recruitment. SM informed ASM that the appellant was enquiring about a position. ASM asked SM to bring the appellant to his office. Later that day SM was informed by ASM that the appellant was starting work the following Monday.

In his evidence SM stated that he was unaware of a letter dated the 8th August 2006 at the time of the events above. He had not referred the appellant to ASM for this letter.

During cross-examination SM stated that he had never provided a career break to anyone. If a career break was granted to an employee it would be recorded.

In reply to questions from the Tribunal, SM was certain that he had met with the appellant twice on his return from Australia in 2006.

The second witness was the Parts and IT Manager (hereinafter PM) in 2005. PM recalled that when the appellant left in 2005 his colleagues signed a card to mark his leaving. The appellant did not approach PM at any time about a career break. PM has twenty years experience with the respondent company and he is unaware of anyone taking a career break.

In 2006 when the appellant returned from Australia he telephoned PM and stated that he was seeking employment. PM informed the appellant he would have to speak to either ASM or SM.

ASM did not discuss a letter dated the 8th August 2006 with PM. ASM left the employment of the respondent approximately one year ago. PM tried to contact ASM to attend the hearing but he was unsuccessful in contacting ASM.

The third witness for the respondent is currently the Human Resources Manager (hereinafter HR). A copy of the appellant's P45 was opened to the Tribunal. HR received this copy from Revenue, as the original was misplaced. The cover letter from Revenue stated that the P45 was generated on the 17 May 2005. The date of cessation was illegible on the copy of the P45.

A contract of employment for the appellant dated the 14th July 2006 was opened to the Tribunal. The appellant's date of commencement was stated as the 10th July 2006. A cover note accompanied the contract and it welcomed the appellant to the company.

A copy of a Form 12A signed by the claimant was opened to the Tribunal. It is an application for a certificate of tax credits. HR stated one purpose for the form is to inform the tax office when a person will be out of the country for a period of time. The form also showed that the appellant was in receipt of unemployment benefit from the 22nd June 2006 to the 10th July 2006.

A printed email contained in the claimant's personnel file was opened to the Tribunal. The email was dated the 14th July 2006 and was written by ASM. ASM requested in the email that a contract be prepared for a technician (the appellant) who would be commencing employment on the 10th July 2006.

The appellant was subsequently made redundant in June 2008.

Appellant's Case:

The appellant planned to take a career break and travel to Australia for one year. He approached SM in May 2005 and put it to SM that he wanted to take a career break as he was going to Australia. The meeting was informal and friendly and they discussed the appellant's itinerary for his travels. When the appellant said he was taking a career break, SM did not really acknowledge

this. The appellant did not really mind as he considered that he had a job when he returned from Australia. At the end of the meeting SM asked the appellant to make contact when he returned. The appellant provided the company with one month's verbal notice of his intention to take a year's career break.

The appellant returned from Australia in May 2006. He received unemployment benefit for approximately three weeks, as he did not want to go straight into employment. The appellant went to the respondent's premises and spoke to SM who referred the appellant to ASM. During their discussion ASM asked the appellant if he could start work the following day but they reached an agreement that the appellant would start the following Monday. The appellant received a new contract and he signed this. ASM told him the reason he had to sign a new contract was because there had been a takeover in the company.

A few months later in August 2006 the appellant approached ASM to write a letter for him that would assist him in securing a mortgage. ASM typed letter dated the 8th August 2006 for the appellant.

In June 2008 the respondent made the appellant redundant. He was shocked that he was selected for redundancy as he had long service with the respondent, as he had worked there since 1998. The other employees selected for redundancy had shorter service.

During cross-examination the appellant stated when he informed SM that he was taking a career break the matter was not discussed in any great detail. The appellant presumed his position would be open for him when he returned, as SM had told him to contact him on his return.

The appellant confirmed he had ticked the box on the 12(A) form confirming that he had received a P45 on cessation of his employment in 2005.

The appellant also confirmed he had signed the contract which stated his date of commencement to be the 10th July 2006. The appellant considered that ASM had used the word "welcome" in the cover letter, as ASM had not previously worked with the appellant. The appellant highlighted that ASM's email stated that the appellant had previously worked with the company and that he had just returned from Australia.

When the appellant asked ASM for the letter of the 8th August 2006 it was for mortgage purposes. The appellant explained to ASM that he needed the letter to state that he was in continuous employment but that he had taken a one-year career break.

In reply to questions from the Tribunal, the appellant confirmed that when he spoke to SM in 2005, SM did not say directly that he agreed to a career break but he had asked the appellant to contact him on his return. The appellant was certain that he had only one meeting with SM in May 2006 when he returned. The appellant did not recall making a telephone call to PM.

Determination:

The Tribunal carefully considered both the verbal and documentary evidence adduced by the parties. The Tribunal particularly noted the reasons outlined by the appellant in asking the After Sales Manager to write the letter of the 8th August 2006. From the evidence the Tribunal

unanimously determines that the period between June 2005 and July 2006 was not a career break.

Accordingly, the appellant does not have the requisite 104 weeks service, as set out under Section 6 of the Acts, in order to qualify for a lump sum payment under the Redundancy Payment Acts, 1967 to 2003. The appeal before the Tribunal must fail for want of jurisdiction.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)