

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

Employee

-appellant

CASE NO.

RP987/2008

against

Employer

-respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2003

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr S. Ó Riordain

Members: Mr R. Murphy
Mr C. Ryan

heard this appeal at Carlow on 21st April 2009

Representation:

Appellant : James Cody & Sons, Solicitors, Centaur Street, Carlow Town, Co Carlow

Respondent : McDonnell Maher & Co., Market Square, Bagenalstown, Co. Carlow

The decision of the Tribunal was as follows:

Respondent's Case

A director of this company outlined the background to their case. No written terms and conditions issued to the appellant as all aspects of their employment relationship with the appellant were only verbally expressed. The appellant commenced employment with this company in May 2005 and that employment ended in September 2008 due to trading difficulties. The witness argued that since the appellant had broken his service in the summer of 2007 then he did not have the required two years continuous service to entitle him to a statutory redundancy lump sum.

In allowing the appellant to take leave beyond the statutory requirement in 2006 the respondent explained to the appellant that such a scenario could not be permitted each year. In early July 2007 the appellant again asked for leave of circa five weeks commencing on 24 July. By that time the appellant had nine days statutory leave outstanding. The respondent found it unable to grant this extended and unpaid leave to the appellant and invited him to resign from the company should he wish to proceed with his holiday plans. The appellant declined this invitation to give his notice saying "whatever" but he also went ahead with his five weeks leave. In those circumstances the respondent issued a P45 to the appellant stating his date of leaving was 29 August 2007. No letter of termination however was sent to the appellant as the respondent considered that the appellant had resigned.

Prior to his departure from the respondent the witness told him that he was welcome to return to the

company to apply for work. Apart from this leave issue the respondent and the appellant enjoyed a good working relationship. The respondent duly re-employed the appellant in late September 2007, as there was sufficient work available for him. That employment lasted for a further twelve months.

An independent accountant provided some details on the issuing of the appellant's P45. The P45 was sent from his office to the respondent's who in turn despatched it to the appellant.

Appellant's Case

The appellant denied receiving a P45 from the respondent in the summer of 2007. However he did receive a P60 for 2007 that showed he had at least two separate employment periods in that year. He acknowledged that the respondent mentioned a P45 to him when he asked for extended leave. He also stated that there was no mention of finishing employment should he take that leave. He told the director that he did not want to break his service. The witness returned to Ireland on 19 September and three days later reported for work without comment or incident.

Determination

There was a clear conflict of evidence between the parties to this case. A basic problem was the lack of documentary evidence to support either side's contentions. It is clear however that references were made to a possible break in service for the appellant in 2007. The appellant's P60 for that year showed he explicitly broke his employment into at least two segments. That confirms there was a break in the appellant's employment record that year. In those circumstances the Tribunal finds the evidence of the respondent more credible in this case and accordingly cannot safely state that the appellant had the two years continuous service needed for an entitlement to a statutory redundancy.

The appeal under the Redundancy Payments Acts, 1967 to 2003 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

