

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

Employee
- *appellant*
against

RP975/2008

Employer
- *respondent*
under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath

Members: Mr. B. Kealy
Mr B. Byrne

heard this appeal at Dublin on 3rd February 2009

Representation:

Appellant: in person

Respondent: C.I.F., Construction House, Canal Road, Dublin 6

The decision of the Tribunal was as follows:

Appellant's case:

The appellant said there was a break in his service in 1994, but that he came back after 9/10 months and was told that all his entitlements were reinstated. However he got nothing in writing to this effect. He said that it was MM the Managing Director's brother who asked him to come back to work in 1995 and who told him that his service would remain unbroken.

He said that he left his job originally because he felt he was being accused of stealing a drill that had gone missing and his pay was stopped as a result. He couldn't explain why he hadn't approached his trade union about this issue before he left.

He met MM some months later and was told that he could come back to work with all his entitlements restored, including his full service. He agreed that there was nothing in writing to confirm this, but he took the company's word on it.

He met KM three times in order to discuss his redundancy payment, and he raised the service issue. KM told him he would check this out.

Respondent's case:

The T1A stated that the appellant walked away from the job, he was not fired. He made no complaint to management before he left. He should have approached someone in the company if he had a problem. It was common for people to come and go, as there were plenty of jobs at the time. It beggars belief that the appellant would not try to resolve the situation rather than walk away.

The Managing Director (KM) gave evidence that the company was still trading, and that he had a good working relationship with the appellant. He didn't recall a drill going missing at the time, nor did he stop the appellant's pay, as this would be illegal. He said that the appellant walked away from the job, so he gave him his P45. No one asked the appellant back to work, because if they had it would have to be passed by him, and this did not happen. It was his understanding that the appellant approached the company to come back, and he had no problem with this. MM was not a company Director and did not have authority to hire and fire.

He said that when the appellant came in to collect his redundancy he disputed the dates, and he said he would look into it. However, there was no record of him being reinstated. He did not speak to MM about this issue.

Determination:

The Tribunal has carefully considered the evidence presented in the course of this hearing.

Having considered the evidence tendered the Tribunal is satisfied that the appellant believed that he was returning to the workplace after a short absence in early 1995 on the understanding that he was retaining the length of service he had built up over the previous five years.

The appellant had made this arrangement with his line manager who also happened to be the brother of the Director who gave evidence on behalf of the employer company.

It is noted that there was no evidence tendered to rebut the appellant's contention though the line manager could have been consulted.

The Tribunal therefore finds that the appellant had nineteen years service with the employer company and not the thirteen set out in the RP50.

Accordingly, the Tribunal finds that he is entitled to a redundancy lump sum under the Redundancy Payments Acts, 1967 to 2007 based on the following details:

Date of Birth	5 March 1959
Date employment commenced	15 October 1989
Date employment ended	4 August 2008
Gross weekly salary	€707.04

(It should be noted that payments from the social insurance fund are limited to a maximum of €600.00 per week.)

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

