

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - appellant

CASE NO.
RP1625/2009

against

EMPLOYER - respondent

and

EMPLOYER - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony BL

Members: Mr. W. O'Carroll
Mr. A. Butler

heard this appeal in Ennis on 25 February 2010

Representation:

Appellant(s) :
Ms. Christine Hayes, Citizens Information Centre,
Bindon Lane, Bank Place, Ennis, Co Clare

Respondent(s) :
No legal representation

The decision of the Tribunal was as follows:

The appellant commenced employment as a labourer in September 1987 with MH, a building contractor operating as a sole trader. In March 2003 the first named respondent was incorporated with MH and his wife as its directors. In November 2003 the second named respondent was registered as a partnership with MH and his wife as the partners. Both of the aforementioned entities were involved in building and the claimant continued to work for them until he was made redundant on 19 December 2008. The appellant had never been informed of a change of employer. There had been breaks in the appellant's employment while employed with the various entities.

Determination

The question the Tribunal has to resolve is whether any of the three breaks (below) in the appellant's employment while working with the aforementioned entities between 15 September 1987 and 19 December 2008 constitutes a break in his continuity of service for the purposes determining his length of service under schedule 3 of the Redundancy Payments Act 1967 as amended and, thus, the amount of the redundancy payment due to him.

First Break: 12 June 1988 to mid April 1989.

It was common case that the claimant resigned from his employment with MH (sole trader) on 12 June 1988 and recommenced with MH in April 1989. The effect of Schedule 3 para. 4 of the Redundancy Payments Act 1967 is that resignation breaks continuity of service.

Second Break: 14 February 2001 to 1 March 2001

Having determined that there was a break in the appellant's continuity of employment on 12 June 1988 for the purposes of the Redundancy Payments the appellant recommenced a new employment with MH in mid April 1989. On or around 14 February 2001 there was a dispute between both men and the appellant walked off the site in a huff. The appellant was not issued with a P45 and he returned to work on 1 March 2001, on foot of MH's invitation to him to return. The Tribunal finds that this was a dispute in the nature of disputes that sometimes arise between an employer and employee and that it did not break the continuity of employment.

Third Break: 4 April 2003 to late August 2003

The appellant resumed employment with MH on 1 March 2001. On 3 March 2003 the first named respondent was incorporated with MH and his wife as its directors. The appellant continued in the employment and was not made aware of this change.

According to Mrs. H (the second director and wife of MH) the appellant was recorded on their books as being ill from 7 to 11 April 2003 and was not thereafter on their books until late August 2003.

The appellant's evidence was that he was absent due to illness over several weeks, commencing on 4 April 2003 and this resulted in his being on disability from 12 April 2003 to 23 May 2003. During his illness he was hospitalised for one night. The appellant had informed MH that he would be out sick for a few weeks. When the appellant was ready to return to work in late May 2003 it was quiet and he was informally put on lay-off. He sought a P45 to enable him to draw unemployment benefit while on lay-off. He was paid unemployment benefit from around mid June 2003 until 23 July 2003. He had holidays and then returned to work in late August 2003.

While MH was aware that the appellant was sick he was not aware that he had been in hospital and was unclear as to what happened when the appellant became available/fit for work. It was Mrs. H's evidence that she had probably asked the accountant to issue the appellant with the P45 for Social Welfare.

Having considered the evidence the Tribunal is satisfied that the break (4 April 2003 to late August 2003) comprised a period of illness, lay-off and annual leave. Under Schedule 3 para.5 of the Redundancy Payments Act 1967 as substituted by section 12(a) of the Act of 2003 these do not break continuity of service.

It was common case that thereafter the appellant worked with the first and second named respondent from late August 2003 to 19 December 2008 when he was made redundant.

Accordingly, the appellant's continuity of service for the purposes of a redundancy payment runs from 15 April 1989 to 19 December 2008.

As the abovementioned lay-off did not occur within the three years immediately prior to the dismissal by reason of redundancy it does not affect the appellant's reckonable service.

The Tribunal is satisfied that the claimant's continuity of employment was not broken by virtue of the change of employer.

Accordingly, the Tribunal 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	14 January 1959
Employment commenced	15 April 1989
Employment ended	19 December 2008
Gross weekly pay	€560.00

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)

