

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE

RP1527/2009

against  
EMPLOYER

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms S. McNally

Members: Mr. P. Casey  
Mr O. Wills

heard this appeal at Cork on 10th June 2010

Representation:

\_\_\_\_\_

Appellant:

The appellant in person

Respondent:

The respondent in person

The decision of the Tribunal was as follows:-

#### **Respondent's case**

The respondent stated that the appellant had been employed by him for two separate periods of time. The first was from 24<sup>th</sup> November 2003 to 31<sup>st</sup> August 2006 and the second was from 12<sup>th</sup> November 2007 to 19<sup>th</sup> November 2008.

The respondent vehemently denied having allowed the appellant a leave of absence for the time between both periods of employment or having told the appellant to say he had if anyone asked.

It was the appellant's decision to leave on 31<sup>st</sup> August 2006 because he wanted to travel the world. There was no arrangement whereby his job would be held open for him and he had been replaced by other staff. In January 2007 the respondent phoned the appellant and asked him if he was planning on returning to the company. The appellant said he would contact the respondent when he returned to Ireland. There was no commitment given by either party at that time.

When the appellant returned to Ireland the respondent offered him a job and the appellant started

back on 12<sup>th</sup> November 2007. However due to a downturn in the industry the appellant was made redundant on 19<sup>th</sup> November 2008. Therefore the respondent held that, for the purposes of the acts, the reckonable service of the appellant was 12<sup>th</sup> November 2007 to 19<sup>th</sup> November 2008. As this was less than 104 continuous weeks the respondent did not pay a redundancy lump sum.

### **Appellant's case**

The appellant stated that he met with the respondent two months before he left in August 2006 in order to give the respondent notice. The reason for leaving was that he intended to spend time travelling abroad. The respondent was quite shocked and asked if he would be interested in returning to work for the company when he came back to Ireland and told him that his job would be waiting for him. The respondent always knew that the appellant would only be gone for a year.

So as to not put too much pressure on the appellant the respondent took on another person on a temporary basis while the appellant was gone and let that person go two or three months after the appellant returned to work. Before returning to work in November 2007 the respondent told the appellant that if anyone asked he was to say he had been on a years leave.

Therefore the appellant's case was that his service for the purposes of the acts should be 24<sup>th</sup> November 2003 to 19<sup>th</sup> November 2008 with a non reckonable period from 1<sup>st</sup> September 2006 to 11<sup>th</sup> November 2007.

### **Determination**

The Tribunal are satisfied that a genuine redundancy situation did exist and that the appellant's employment was terminated on the basis of redundancy. Furthermore the Tribunal are satisfied that there was a termination of employment in August 2006 as stated by the appellant in his evidence. However the Tribunal is not satisfied by the evidence and documents put before it that there was a leave of absence agreed between the parties and therefore there was a break in employment. The appellant recommenced employment with the respondent on 12<sup>th</sup> November 2007 and was made redundant on 19<sup>th</sup> November 2008 and it is this period of time that is relevant to the Redundancy Payments Acts, 1967 To 2007. As this was less than 104 weeks of continuous employment the appellant is not entitled to a redundancy lump sum payment and his appeal under the aforementioned act must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

