

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE – *appellant*

CASE NO.
RP2091/2009

against

EMPLOYER – *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P Hurley

Members: Mr W O'Carroll
Ms H Murphy

heard this appeal at Loughrea on 23rd August 2010

Representation:

Appellant(s): Ms Orla Keyes BL, instructed by:
Áine Feeney
Feeney Solicitors
1st Floor Lismoyle House, Merchants Road, Co. Galway

Respondent(s): Mr John Flannery
Mr John Flannery & Associates
4 Fr Griffith Road, Galway

The decision of the Tribunal was as follows:

The respondent company raised a preliminary issue concerning whether the appellant had the requisite 104 weeks' continuous employment in order to make an appeal under the Redundancy Payments Acts 1977 to 2007.

Appellant's Case:

The appellant gave evidence that his employment with the respondent company commenced in 2002. In 2005 his girlfriend was offered a scholarship in Australia. He told the company that he was leaving for a short period of time. It was verbally agreed that his job could be there for him when he came back. He kept in contact with the company while he was away. His point of contact was the Foreman.

He went to the USA in early 2006 and returned to renew his visa. He worked with the company for ten weeks from May until July. He returned at Christmas 2006. In January 2007 he received a

phone call from a Director who said there was work available and invited him in. They had a conversation about wages. He received a contract in November 2007. He asked to begin a pension and a few months later the company agreed. There was no mention of him not having the three years' continuous service required to enter the company pension scheme.

Respondent's Case:

The Managing Director of the respondent company gave evidence that the appellant did not have 104 weeks' continuous service with the company prior to being let go in November 2008 due to a downturn in business. The appellant had three periods of employment with the company. The first two periods were terminated by the appellant leaving of his own accord without any agreement that his job would be held open for him. The appellant was issued with a P45 at the end of the each period of employment.

The appellant's first period of employment with the company was from July 18th 2002 until May 27th 2005 when he left to travel to Australia with his girlfriend. In 2006 he worked from May 4th until July 14th. He left to travel to the USA with his girlfriend. His final period of employment was from January 22nd 2007 until November 7th 2008. The position was not advertised but a company Director formally interviewed him for the position.

The company does not operate a leave of absence scheme, as it is a small company. The company facilitated the appellant in allowing him to enter the pension scheme, as he was a good worker.

Determination:

The Tribunal is satisfied that the appellant's absences from his employment, from May 2005 until May 2006 and from July 2006 to January 2007, were of such a type that it was not in the contemplation of the employer that these absences were to be considered as interruptions of permanent service. Further, there was conflicting evidence from the parties as to the nature and terms of his re-engagement with the respondent.

The Tribunal regards the holding of the interview in January 2007 and the issuance of the written contract of employment in November 2007, which indicated a commencement date of January 22nd 2007, as a clear repudiation of any previous permanent employment up to that date. In the unanimous view of the Tribunal the appellant's contention that he established that he had 104 weeks continuous employment up to the date of his dismissal cannot be sustained. Accordingly, the Tribunal does not have jurisdiction to hear the appeal under the Redundancy Payments Acts, 1967 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)