

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
Marie Carey, - appellant
EMPLOYEE
against

CASE NO.
RP1758/2009

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. P. Casey
Mr. O. Wills

heard this appeal in Clonakilty on 5 July 2010

Representation:

Appellant(s):

In person

Respondent(s):

Ms. Deirdre Malone, P.J. O'Driscoll & Sons, Solicitors,
73 South Mall, Cork

The decision of the Tribunal was as follows: -

The appellant commenced with the respondent as a trainee solicitor on 2 July 2001 and qualified in the Hilary term of 2005. Before Christmas 2006 the appellant decided to travel around the world for a year. She made a booking and paid a deposit.

In January 2007 the appellant informed the respondent of her plans. It was the appellant's position that she had neither asked nor expected that the respondent would hold her position open for her until her return but that the respondent volunteered to do so. It was common case that the respondent asked the appellant if she would return later in the year to give evidence on the respondent's behalf in an upcoming case and the appellant agreed. It was the respondent's position that she had not made any such promise to the appellant and would not have been in a position to guarantee her a job on her return. The respondent is a small firm with three solicitors. The appellant left the employment on 13 April 2007 to commence her travels.

The appellant returned in November 2007, at the respondent's expense, to give evidence on behalf of the respondent in a case. It was the respondent's position that during her visit home the appellant asked if there would be a position for her on her return from her travels in 2008 and was told there would. It was further the respondent's position that this was the first time the appellant's future employment with the respondent had been discussed between them. While the appellant agreed that in November there had been a discussion about her returning to work for the respondent she did not ask for her job back at that stage. By agreement the appellant recommenced with the respondent on 31 March 2008. The respondent had not employed anyone else while the appellant was travelling.

By letter dated 27 February 2009 the respondent informed the appellant that following an analysis of the practice's financial position it had no option but to implement redundancy within the practice. The criteria for selection were Last In First Out (LIFO) and income generation. On this basis, the appellant's position was to be made redundant with immediate effect. Based on a start date of the 31 March 2008 the respondent gave the appellant one-week's pay in lieu of notice.

It was the respondent's position that the appellant's leaving her employment in 2007 had been entirely unilateral and voluntary on the appellant's part and that there was no basis for contending that the respondent had authorised it. It was further argued that the appellant had not sought the respondent's authority to depart. It was argued that the appellant's earlier period of employment did not form part of her continuous service for the purposes of entitlement to a redundancy payment.

It was the appellant's position that she had not expected that the respondent would keep her job open for her but the partner volunteered that she would. Thus, the partner authorised her absence and she was entitled to have her period of absence counted as reckonable service under section 8A (c) Schedule 3 of the Redundancy Payments Acts, 1967 to 2007, as substituted by section 12 of the 2003 Act.

Determination:

It was common case that a redundancy situation existed in the respondent's practice in or around February 2009. In determining whether the appellant is entitled to a redundancy lump sum payment the first question the Tribunal has to determine was whether the break in the appellant's employment between 13 April 2006 and 31 March 2007 interrupted her continuity of employment with the respondent.

The conversation between the parties in January 2007 is vital to the determination of this issue. The appellant's case was that she had neither asked nor expected that the respondent would hold her position open for her until her return but that the respondent volunteered to do so. The Tribunal accepts the respondent's evidence that the respondent did not volunteer to keep the appellant's position open for her while on her break. The Tribunal finds that the appellant voluntarily left her employment in April 2007. Accordingly, under section 4 of schedule 3 of the Redundancy Payments Acts, the appellant's continuity of employment with the respondent was broken at that stage. As there was no continuity between the two employments and as the appellant did not have two years' continuous service in the second employment, the Tribunal unanimously finds that the appeal under the Redundancy Payments Acts, 1967 to 2007, fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)