

**EMPLOYMENT APPEALS TRIBUNAL**

**APPEAL(S) OF:**  
EMPLOYEE

**CASE NO.**  
MN 1365/2009  
RP1558/2009

*- Appellant*

against  
EMPLOYER

*- Respondent*

under

**MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2007**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Dr. A. Courell B.L.

Members: Mr. W. O'Carroll  
Ms H. Henry

heard this appeal at Loughrea on 13th April 2010

**Representation:**

Appellant(s) : Mr Blazej Nowak, Polish Consultancy Enterprise, Information Officer,  
19 Talbot Street, Dublin 1

Respondent(s) : In Person

The decision of the Tribunal was as follows:-

**Preliminary Issue:**

A preliminary issue was raised in respect of whether the appellant had the relevant service to take an appeal under the Redundancy Payments Acts, 1967 to 2007.

**Appellant's Case:**

The appellant commenced employment with the respondent in February 2006 as a valet and signed his contract of employment on February 26<sup>th</sup> 2006. In December he spoke to the After Sales Manager (hereafter known as ASM) that he wished to take an extended holiday home to Poland over the Christmas period as his mother was ill and needing surgery. He received this permission but not in writing. He left on December 16<sup>th</sup> 2007 and returned on January 15<sup>th</sup> 2008.

The following day he met ASM at the respondent's premises and asked him "*was there work and I was ready to return*". ASM called him the following day to tell him there was work for him. He did not receive another contract of employment. On April 16<sup>th</sup> 2009 he received a letter notifying him of compulsory redundancy and was let go on April 24<sup>th</sup> 2009.

On cross-examination he stated he had not received his P45 dated December 14<sup>th</sup> 2007. He had moved address but had friends living at that address who would have forwarded any post to him. He refuted he had told his Supervisor that he was leaving, returning to Poland to have an operation on his knee and did not know when it was and did not if he would return. When put to him he could not understand why his final payslip in December 2007 was for a week's wages plus 4 days.

**Respondent's Case:**

ASM gave evidence. The appellant had been a good and hard worker and there were no communication issues. He could follow instructions.

In December the appellant's Supervisor informed him the appellant had told him he wanted to leave to return to Poland. He met the appellant who informed him that he wanted to return to Poland, was to have an operation on his leg and did not know when he would return. He left on December 14<sup>th</sup> 2007, all monies due to him were paid and his P45 was issued to the address the company had on file for him.

ASM produced timesheets for the appellant's last week in December up to the week when he returned to work. His name originally was printed on the sheet and ASM had written and initialled "finished" beside the appellant's name the week he left. His name did not appear on the sheets until January 17<sup>th</sup> 2009 where it was written in pen.

ASM admitted it was his mistake the appellant had not been issued with a new contract in January 2008. The appellant did receive the letter concerning compulsory redundancy but did not receive a payment, as he did not have the required service.

The appellant's Supervisor gave evidence. He stated the appellant had told him in December 2007 that he was leaving to return to Poland as he needed an operation on his leg and did not know when he would return. He informed ASM and was surprised he returned in January 2008.

**Determination:**

The Tribunal is not satisfied that the appellant had the requisite service to be entitled to a payment under the Redundancy Payments Acts, 1967 to 2007, as he was not continuously employed for 104 weeks. His initial contract ended on December 14<sup>th</sup> 2007 when he returned to Poland. The Tribunal notes that the appellant received his P45 and all relevant monies at that time.

Accordingly, the appeal under the Redundancy Payments Acts, 1967 to 2007 fails. The Tribunal is also satisfied that the appellant received his requisite minimum notice entitlement and therefore his claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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