**EMPLOYMENT APPEALS TRIBUNAL**

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| APPEALS OF: | CASE NO. |
| EMPLOYEE | RP1488/2010 |
| ***-appellant*** | MN1042/2010 |

Against

EMPLOYER ***-respondent***

Under

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

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr K. Buckley

Members: Ms M. Sweeney
Mr J. Flavin

heard this appeal at Cork on 9th December 2010

**Representation:**

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Appellant: Mr. Frank Kelleher, Francis C Kellleher & Co, Solicitors, 1 Pearse Square, Cobh, Co Cork

Respondent: J.M. Cronin & Co, Solicitors, 8 Sullivans Quay, Cork

**Respondent's Case**

The appellant was employed by the respondent, a security services contractor, as a security guard for a large dockyard. The appellant was employed on the 17th of November 2002. The respondent informed the appellant that he did not intend continuing with the dockyard contract when it expired. The contract expired on the 28th of February 2010. The respondent's two son-in-laws acquired the contract.

The appellant approached the respondent on the 10th of January 2010 to inform him that he was going to South Africa for three months. The respondent did not refuse this request but informed him that he would not be able to keep his position open for him for three months and that the respondent would not be seeking an extension to the security contract due to expire in February. The respondent informed the appellant that on his return he would have to contact whoever took over the contract to see if there was a position available for him. The respondent paid the appellantall his outstanding money plus an extra €100.00.

The 2007 the appellant had gone to South Africa for three months using 1 months paid leave and 2

months unpaid leave. The respondent informed him at the time that if he did not have a permanent employee in place the appellant would be re-employed. On the appellant's return he re-commenced employment, as he had not been permanently replaced.

On the appellant's return form South Africa in 2010 he requested a redundancy payment from the respondent. The respondent advised the appellant that he had left his job of his own accord and that it wasn't a redundancy situation. The respondent's son-in-laws took over the appellant's role and another employees role on their departure so as to train them for the contract.

The respondent was involved in the local Citizens Advice Centre and had previously helped the appellant organise his pension.

**Appellant's Case**

The appellant commenced employment in 2001. The appellant gave the respondent 1-month's notice of his intention to go to South Africa for three months in January 2010; the respondent said there was no problem with the appellant taking unpaid leave. The appellant was given 2 weeks notice and informed there might not be a job on his return. The appellant did not leave his job; if he had known his job would not be there for him on his return he would not have gone to South Africa.

When the appellant returned to Ireland he contacted the respondent to request his redundancy. The respondent informed the appellant that he was too old to claim redundancy and no longer able for the 12 hour shifts; the appellant trusted this advice, as the respondent was involved in the Citizens Advice Centre. The appellant did a few shifts for the new contractors but the offer of shifts completely stopped when the respondent received the T1A notice of a claim.

In 2007 when the appellant first went to South Africa for three months he phoned the respondent before his return to make sure his position was still available.

**Determination**

The Tribunal considered the evidence adduced at the hearing. There was a divergence on a number of issues between the evidence of the appellant and the evidence of the respondent.

The appellant had previously visited South Africa in 2007. The respondent's evidence was that it had been made clear to the appellant at that stage that his job would only be available to him on his return from holidays if it had not been filled in the meantime. The appellant did not agree with the respondent's evidence.

However, the appellant agreed that he had phoned the respondent from South Africa before his return from the 2007 trip to enquire in relation to his position. He said that he was advised that the job had not been filled and that the position was still available. The Tribunal inferred from this that the appellant was aware in advance that his job was not being kept open for him on the first occasion.

The respondent also gave evidence that he had indicated to the appellant that his position would not be available for him on his return from the 2010 trip.

The Tribunal felt that the critical point was whether the issue of redundancy had been discussed

prior to the appellant going on holidays to South Africa. The appellant said that such a discussion took place. The respondent was adamant that there was no such discussion before the holiday and that ant reference to redundancy took place only after the appellants return.

The appellant had contradicted his own evidence on a number of occasions. A date had been changed on a payslip. The appellant gave evidence that tickets for the trip to South Africa had been purchased prior to his discussion with the respondent. The appellant subsequently indicated that the tickets had been purchased after his discussion with the respondent.

The Tribunal preferred the evidence of the respondent and determined that the appellant left his employment of his own accord. Accordingly the appeals under the Redundancy Payments Acts, 1967 to 2007 and the Minimum Notice and Terms of Employment Acts, 1973 to 2005 fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)