

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:
EMPLOYEE *-appellant*

CASE NO.
RP3081/2009

against
EMPLOYER *-respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Hayes

Members: Mr M. Carr
Mr J. Flannery

heard this appeal at Navan on 18th February 2011

Representation:

Appellant: In Person

Respondent: In Person

The decision of the Tribunal was as follows: -

The respondent employed the appellant initially in 1990. In 1993 the appellant commenced a world tour by motorcycle. He returned in 1995 and again took up employment with the respondent. In 2009 the respondent's business was affected by the recession to the extent that redundancies were required. The appellant was dismissed by reason of redundancy and received a redundancy payment calculated on the basis that his employment had commenced on 25th September 1995. The appellant brings this claim on the basis that the payment should have been calculated from his initial start date in 1990.

The appellant told the Tribunal that he did not receive a P45 in 1993 and that the respondent had promised to keep his job open for him, pending his return. On behalf of the respondent, the Tribunal was told that the appellant had handed in his notice in 1993 so that he could go on his world tour. They had suffered a fire in their office in 2002, which had destroyed their office and could not, therefore, produce any documents to substantiate this. The appellant did not dispute that there had been a fire. The Tribunal was also told that the respondent never had more than 2-3 employees and would not have been in a position to keep a job open for up to two years. When the appellant returned in 1995 and sought employment, his timing was fortuitous in that another employee had only that week given in his notice, so a vacancy existed.

Determination

The Tribunal is satisfied that the appellant voluntarily left the respondent's employment in 1993 thereby breaking the continuity of his employment. The Tribunal is satisfied that this was not a leave of absence-type situation but a resignation. The Tribunal is therefore satisfied that the appellant's redundancy payment was correctly calculated from 25th September 1995. As he has received his correct statutory redundancy payment in full, the claim under the Redundancy Payments Acts, 1967 to 2007 is dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)8