

EMPLOYMENT APPEALS TRIBUNAL

APPEALS OF:

CASE NO.

EMPLOYEE –**Appellant**

RP2147/2010
MN1542/2010

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. D. MacCarthy S.C.

Members: Mr. N. Ormond
Mr. G. Whyte

heard these appeals at Dublin on 19 April 2011

Representation:

Appellant:

Mr. Conor Bowman B.L. instructed by Mr. Michael Traynor,
Gill Traynor Solicitors, 39/41 Sundrive Road, Dublin 12

Respondent:

Mr. John McCarthy, John J. McCarthy & Co. Chartered Accountants,
128 Ranelagh Village, Dublin 6

The determination of the Tribunal was as follows:

Determination:

At the outset the appeal under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 was withdrawn. Whilst the respondent was prepared to concede liability under the Redundancy Payments Acts there was a dispute between the parties as to the length of reckonable service the appellant was entitled to. For a period of some eighteen months before the end of the employment the appellant had been on an authorised career break. It was conceded on behalf of the respondent that an earlier period of career break, which occurred before the last three years of the employment, was reckonable.

Paragraph 8 of Schedule 3 of the Redundancy Payments Acts, 1967 to 2007 provides *During, and only during, the last 3 year period ending with the date of termination of employment, none of the following absences shall be allowable as reckonable service-*

- a) *absence in excess of 52 consecutive weeks by reason of an occupational accident or disease within the meaning of the Social Welfare (Consolidation) Act, 1993,*
- b) *absence in excess of 26 consecutive weeks by reason of any illness not referred to in subparagraph (a),*
- c) *absence by reason of lay-off by the employer.*

Paragraph 8A of Schedule 3 of the Redundancy Payments Acts, 1967 to 2007 provides

The following shall be allowable as reckonable service

- a) *a period during which an adopting parent was absent from work while on adoptive leave under [the Adoptive Leave Act 1995](#) ,*
- b) *a period during which an employee was absent from work while on—*
 - (i) *additional maternity, protective leave or natal care absence within the meaning of the Maternity Protection Act 1994,*
 - (ii) *parental leave or force majeure leave within the meaning of [the Parental Leave Act 1998](#) , or*
 - (iii) *carer's leave within the meaning of [the Carer's Leave Act 2001](#) ,*
- c) *any absences not mentioned in paragraphs (a) or (b) but authorised by the employer.*

Accordingly the Tribunal is satisfied that the period of career break immediately preceding the termination of the employment is allowable as reckonable service. The Tribunal finds that the appellant is entitled to a lump sum payment of €13,964-48 under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria

Date of Birth	5 January 1948
Employment commenced	6 April 1998
Employment ended	31 October 2009
Gross weekly pay	€578-00

This award is made subject to the appellant having been in insurable employment under the Social Welfare Consolidation Act, 2005 during the relevant period.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)