

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
- *appellant*

CASE NO.

EMPLOYEE

RP1134/2010

MN799/2010

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 P. Hurley

Members: Mr. W. O'Carroll
Mr N. Dowling

heard this appeal at Tullamore on 10th June 2011

Representation:

Appellant: In person

Respondent:

The decision of the Tribunal was as follows:

Appellant's case

The appellant gave direct sworn evidence. He had received his redundancy sum of €7284.00 when he had served the respondent with a RP 9 form. He was seeking additional reckonable service maintaining that he went on a career break in 2003 and his service since 1998 should be included in his statutory redundancy.

On 25th April 2003 he went on a career break from the respondent company. Six weeks before the commencement of this career break he had discussed the matter with the respondent. He informed him that he was planning to travel to Australia and the respondent told him that his job would remain open for him until his return. The appellant was referred to a letter from the respondent dated the 10th April 2003, which states "We are very sorry to see "*appellant*" leave". The appellant maintained this was a reference and the career break between himself and the respondent was a verbal agreement. His P45 was also issued to him on the 25th April 2003; he requested this to enable him to claim a tax rebate. He had only gone to Australia on the basis that his job would

bethere when he returned. On his return he made contact with the respondent and returned to work. During his time with the respondent he was unaware of other employees availing of a career break.

Respondent's Case

A director of the company gave evidence on behalf of the respondent. The appellant originally commenced employment on the 4th October 1998, this employment terminated when he left to go to Australia on the 25th April 2003.

The appellant had approached him and informed him that he was thinking of going to Australia. He responded by telling the appellant that if he wished to travel he should go, however he could not guarantee that there would be a job for him on his return. He had provided the appellant with a reference and issued his P45. He had also given him an additional sum of money on his departure. He did not know when the appellant would be returning from Australia. The appellant on his return from Australia contacted him wondering if there was any chance of a job, he asked the appellant to leave it with him. The company acquired a contract to wire 80 houses so he telephoned the appellant and offered him a position.

There was no policy with in the respondent company to provide career breaks or leave of absences to employees.

Determination

The appellant agreed that he had approached his employer on the 3rd September 2009 seeking redundancy payment. The respondent concurred with his evidence and arranged for completion of a RP50 form. The redundancy money of €7284.00 was paid so the behaviour of the appellant and respondent at this juncture indicated the termination of employment relationship at this time.

The Tribunal is of the view that there was a break in the appellant's service and that the reckonable service for the appellant employment in respect of which he issued a T.1.A. commenced on the 10th February 2004 and his employment ended on the 3rd September 2009. The respondent concedes that on this latter date the employment ended by way of redundancy.

Therefore the correct commencement date for the purpose of redundancy is 10th February 2004. The Tribunal is dismissing the appellant's claim that his employment ended in 2003 by way of a career break.

Accordingly the appeal under the Redundancy Payments Acts, 1967 to 2007 is dismissed. As the appellant served the respondent with a RP 9 seeking his redundancy he is therefore deemed to have voluntarily left his employment and accordingly is not entitled to notice under the Minimum Notice and Terms of Employment Acts 1973 to 2005.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____

(CHAIRMAN)