

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE

CASE NO.
UD1742/2009

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. O. Madden BL

Members: Mr. J. Flanagan
Mr. J. Jordan

heard this appeal in Dublin on 14 September 2010 and 5 January 2011 and 27 May 2011

Representation:

Appellant(s):

Mr. John Murphy, SIPTU, Construction Branch, Liberty Hall,
Dublin 1

Respondent(s):

Mr. Eddie Keenan, Construction Industry Federation, Construction House, Canal
Road, Dublin 6

The determination of the Tribunal was as follows:-

This case came to the Tribunal as an employee appeal against Rights Commissioner Recommendation r-073275-ud-08-TB under the Unfair Dismissals Acts, 1977 to 2007.

Appellant's Case

Giving sworn testimony, the appellant said that he started in July 2005 with the respondent. Around the end of October 2007 he sought leave (to go to Australia) for about six weeks. He hoped to return at the end of the year. He asked KC from the respondent and was granted this leave. Before

going, the appellant spoke to KC who gave the appellant his card and said to e-mail or phone KC when the appellant came back.

The appellant went in early November 2007. He subsequently e-mailed KC and said that he would be flying back via New York for 2 January 2008. There was no indication that there had been a break in his service.

The appellant started back as normal. He found a P45 in his letterbox. He handed it to the quantity surveyor (QS). No-one said that the appellant had broken his service. He never thought about this until after he was told that the respondent was letting people go (including himself) in July (2008). The appellant was a banksman (a signal person for a crane). Cranework was still in operation. He spoke to KC who said to talk to PB (the respondent's contracts director). The respondent told the appellant that he was not entitled to redundancy because he had left the respondent with no return date. Nobody from the respondent had told him that he had broken his service. He said that he thought there was a role for him there because the construction site was half-finished.

The appellant stated to the Tribunal that KC had said to give his P45 to the quantity surveyor.

Respondent's Case

Giving sworn testimony, PB (the respondent's abovementioned contracts director) said that the respondent gave standard construction industry holidays for Xmas, Easter and summer. Anything outside that had to be requested in writing. This was not done in the appellant's case. An application should have been filled in. People missing for extended periods could impinge on a whole construction site. If an employee knew in advance (of something other than unanticipated illness or bereavement) an application had to be made. PB did not know of the appellant getting any permission. Any such permission would usually be cleared with PB after other respondent staff such as DW and SM.

PB added that it had been understood on-site that (in November 2007) the appellant was finishing up and leaving the respondent to work in Australia. A P45 was issued. In late October 2007 "a payslip and a back week" were posted.

PB stated that KC "did not have jurisdiction" to grant the appellant extended leave. The industry was in decline. Any applications for extended leave typically landed on PB's desk. He stated that he would recall them by name. He recalled none for the appellant for whom a P45 was issued.

Giving sworn testimony, SM (personal assistant to the respondent's directors) said that she dispersed memos to staff. She stated that the appellant, after he had come back from Australia, had "started back as a new employee". She had not been aware of him going on extended leave. She "would normally keep records on extended leave" but "there was no correspondence to that effect" and she "had no communication about that".

Giving sworn testimony, MD (a foreman for the respondent in 2007) said that he had known that the appellant was going on holiday (in 2007) and that the appellant had said that he would stay (in Australia) if he got work. MD "had no reason to doubt him". According to MD, the appellant "did not talk about extended leave" and "was going to Australia anyway".

Determination:

This was a highly contested appeal as a consequence of which both sides invested much time and effort with respect thereof.

That aside, the Tribunal has carefully considered the evidence of both sides. The majority of the Tribunal, (Mr. Jordan dissenting), is satisfied that the period from 5 November 2007 to 3 January 2008 was a break in service and, as a result thereof, the appellant does not meet the minimum service requirements for a claim under the Unfair Dismissals Acts. The Tribunal, therefore, upholds Rights Commissioner Recommendation r-073275-ud-08-TB under the Unfair Dismissals Acts, 1977 to 2007, and finds that the appeal against the said Recommendation under the said legislation, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)