EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:	CASE NO.
2 Employees	UD946/2006
	UD947/2006

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

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. J. Fahy
Members: Mr. T. Gill
Mr. M. McGarry

heard this appeal at Castlebar on 4th September 2007

Representation:

Appellant(s) : Ms. Martina Weir, SIPTU, Mayo No. 2 Branch,
Moneen Road, Castlebar, Co. Mayo
Respondent(s) : Mr. John Brennan, I B E C, Ross House, Victoria Place, Galway

The determination of the Tribunal was as follows:-

This Appeal came to the Tribunal by way of two recommendations of the Rights Commissioners in the cases of Employee –v- Employer (ref: r-038805-ud-05/JT) and Employee –v- Employer (ref: r-038808-ud-05/JT).

Respondent's Case:

The first witness for the respondent was the operations manager (OM) at the plant at the time of the appellants' dismissal. He told the Tribunal that there are approximately twenty-five employees at the plant and this could rise to thirty–two at peak production times. The plant was involved in the production of fishmeal and was one of the biggest in the world. The work is seasonal in Ireland. The high season for production is between May and July. Between 2003 and 2004 the company had lost their biggest customer. Temporary workers were employed on a regular basis to cope with peaks in the production.

In the case of the first named appellant (A1), he was employed on a temporary contract from 8th June 2004 to 11th March 2005. A1 was retained until 29th December 2005 and was then issued with his P45. His service was broken and he was rehired on the 16th January 2006 for a period of two weeks. His P45 was issued on the 28th January 2006. The claim lodged to the Rights Commissioner was within the prescribed time limits set down in the Unfair Dismissals Acts, 1973 to 1997 if the date of the 28th December 2006 was to be accepted by the Tribunal. His last contract of employment however, stated he was employed from 16th January 2006 to 27th January 2006.

In the case of the second named appellant (A2), he was employed on successive temporary

contracts. These dated from 21st June 2004 to 25th February 2005, 7th March 2005 to 27th May 2005 and 8th June 2005 to 2nd December 2005. Each of these contracts were terminated by P45s.

The appellants' contracts were terminated because the parent plant in Scotland was back on line and there was no reason to staff the low season in Ireland with temporary employees. A new employee (NE) was not hired until May 2006. He had been an employee for a number of years during the 1990s. He was employed on a temporary basis and when a permanent employee left the plant in August 2006, he was offered the permanent position. Since January 2006, there has been eight further redundancies in the plant.

Under cross-examination, OM said that it was part of his job to consider "lay-offs" based on the volume of work. Both he and the production manager would approve overtime if necessary. This would only occur if there was a perishable order due. The company required a probationary period of six months from all employees. Both appellants completed this successfully. NE was hired when the production manager approached OM and told him that NE was interested in returning to work at the plant. OM did not check to see if A2 and NE had worked at the plant at the same time in the 1990s. OM was not aware that NE had a claim pending before the Rights Commissioners before he was re-hired. He subsequently became aware that NE withdrew that claim. There was no panel or system for rehiring temporary employees. OM placed an advertisement in the newspaper when subsequent temporary vacancies arose. A1 or A2 did not apply for any position. OM denied that the appellants would have had an expectation of being made permanent after twelve months' service on a temporary contract.

Appellants' Case:

A previous employee who had been shop steward (PE) at the company gave evidence. He had been employed at the plant for eight years and was a permanent employee at the time of his departure. He had been approached by a manager on three occasions to return with the promise of a permanent contract in due course. The managing director had telephoned him and promised he would be made permanent within a month if he returned. PE declined as he had procured employment in an alternative industry.

PE has been a shop steward at the plant for three years. He had partaken in negotiations that requested that employees be made permanent between twelve months and eighteen months of service. In the case of A1, the union was pushing for him to be made permanent. This was normally done on a seniority basis by letter. Also, if an employee was laid off, they were asked to return on the basis of seniority. The redundancies that have occurred since 2006 have all been on the administrative side of the business and not on the manufacturing side where the appellants worked. Eleven temporary employees had been employed since the appellants left the plant. The two appellants should have been asked to return to work before NE. The plant is always busy around December/January as they stockpile the feed for their busier times. The employees are on constant overtime and at the time the appellants were dismissed the plant was scheduled to close for two weeks for maintenance. PE would have expected them back to work after this work was carried out.

Under cross-examination, PE said he had been employed in 2000 on a temporary contract. He was sixteen months there and was made permanent. Two temporary employees worked on each shift.

A1 gave evidence. He was employed as a general operative with the respondent company and had a wide range of skills. There were no problems with his work and he worked approximately ten hours of overtime each week. When he was notified of the termination of his contract, he had completed four hours of overtime. This lead him to be shocked at the decision. The company had never approached him to return to work. He did telephone his supervisor to ask for employment and his supervisor told him that he knew what he had to do. He said that if he dropped his claim there would be a job there. A1 wanted to come back to a permanent position. He was dismissed in November and after negotiations with the union, he received half of his Christmas bonus. He had never been reprimanded over the course of his employment. Under cross-examination, A1 said that he understood that if a vacancy arose, the company would contact him to return to work. The company re-employed him for two weeks in January 2006 after receiving notification of his claim lodged to the Rights Commissioners. A1 established loss for the Tribunal.

A2 gave evidence. He was employed as a forklift driver, line operative and basic worker in the plant. He worked on the computer system on the line. NE was unable to work this system. A1 and A2 were equal in skills level and NE was not up to their standard. He would have expected A1 to be rehired before NE should a vacancy arise. He had asked PE to contact him if a vacancy arose. He would have expected PE to fight his case for him at the company. He had two previous periods of temporary lay-off. The company contacted him on both occasions to return to work. In June 2004, he was due to be laid-off and the union took his case and he was kept longer. A2 had made a complaint about a colleague's erratic behaviour in December 2005. He attended the office and had a conversation with the office manager relaying his complaint. He always assumed that after one year's service, he had a legitimate expectation of being made permanent. Under cross-examination, A2 said that he had been employed before NE at the plant. A2 established loss for the Tribunal.

Determination:

The Tribunal heard both appeals from the above named appellants concurrently. All evidence and submissions were carefully considered in the case of both appellants.

In the case of the first-named appellant (A1), the Tribunal is satisfied that the letter of the 6th June from the respondent indicated that an employee with shorter service than the appellant would be offered employment for a short period. However, within three months from the commencement of employment in May 2006, this employee was made permanent. The respondent failed to honour the commitment given in the letter of 2006. Accordingly, in the case of the first-named appellant, the Tribunal upsets the recommendation of the Rights Commissioners and awards him the sum of €10,000.00 under the Unfair Dismissals Acts, 1973 to 1997.

In the case of the second-named appellant (A2), the Tribunal is satisfied to uphold the decision of the Rights Commissioner and determines that the appeal lodged under the Unfair Dismissals Acts, 1973 to 1997, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)