EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:	CASE NO.
3 Employees	UD1022/2006
	UD1057/2006
	UD1021/2006

Against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. K.T. O'Mahony B.L.

Members: Ms M. Sweeney
Mr K. O'Connor

heard this claim at Tralee on 17th October and at Killarney on 5th December 2007

Representation:

Claimant : Mr. Donal Tobin, SIPTU, Conroy Hall, Park Road, Killarney, Co. Kerry

Respondent : Liam F. Coghlan & Co., Solicitors, "Woodhaven", Ballycasheen Upper, Killarney, Co Kerry

The determination of the Tribunal was as follows:

At the outset of this hearing it was agreed that the same issues applied to all three claimants and that the three cases could be heard together.

It was the respondent's case that it was forced to make the claimants redundant in late August 2006 when the funding for the pre-school operation was put "on hold". The respondent regarded that as a withdrawal of the necessary financial resources and closed down the pre-school. It was the case of all three claimants that they were dismissed by letters of 19th July 2006, which dismissals preceded their purported dismissal for redundancy on 29th August 2006.

The Evidence

The respondent provides a wide range of support and services for people from disadvantaged areas within its own area. It is run on a voluntary basis by a board of management. In 2005 the respondent took over responsibility for a pre-school service, from the Parents Committee. The respondent relied on funding from POBAL (formerly ADM) to run the pre-school. The three claimants were employed as assistants in the pre-school on temporary fixed term rollover contracts. The pre-school year was linked to the academic school year of a local primary school. The parties

to the contracts could vary the terms in writing.

The Co-ordinator of the resource centre told the Tribunal that the conditions around funding were continuously changing. The pre-school was coming under pressure from POBAL to increase its services; it wanted extra opening hours per week and extra opening weeks per year. On 23rd November 2004 the claimants agreed to increase their hours of cover for the pre-school on a trial basis from 6th December 2004 to end February 2005, at which time the change was to be reviewed. This change involved an increase in the claimants' hours of work.

In the early part of 2006 the Board of Management indicated its intention to extend the pre-school year to fifty weeks in order to facilitate working parents. A direction issued by the respondent in April 2006, to the effect that the facility was to remain open for fifty weeks, was not implemented because the claimants would not comply with it. The claimants' trade union refuted the respondent's assertion that there was a requirement under the POBAL funding that the centre stayopen for fifty weeks. There was ongoing communication between the parties regarding the rostersfor the following year. In late May 2006 the respondent informed the trade union official that therespondent had signed a contract with POBAL to open the pre-school for at least 46 weeks and thatthe Board of Management had agreed to open the service for fifty weeks. In correspondence dated13th July 2006 the pre-school leader sought clarification regarding the closing date for the summervacation and confirmation that the assistants/claimants would be returning in September 2006. Byletter of 19th July 2006, sent to each of the claimants, the Co-ordinator confirmed to them that theirrosters had been completed for the year to July 2006 and informed them that the Board has decidednot to "re-offer [them] further rosters for September 2006".

The Co-ordinator was adamant that her letters of 19th July 2006 to the claimants were not letters of dismissal. She was conveying to the claimants that they were not being offered the rosters worked the previous years. She had used the word "roster" and not the words "contract" or "dismissal. The respondent had spent fifteen months from February 2005 trying to resolve these issues. It had been explained to the claimants that they could vary their holidays so that there would be cover for the fifty weeks the pre-school was to remain open. Enrolment for the school year 2006 to 2007 hadbeen held on 26th June 2006 and only seven children (five new and two already availing of theservice) had enrolled. The respondent intended opening the pre-school after the holidays and wasexpecting the claimants to return to work; advertisements seeking other assistants for the pre-schoolhad not been placed in the local newspapers. The respondent was expecting that the claimantswould return to the pre-school in September 2006 and that negotiations would recommence at thatstage. The respondent had never told the staff that they were closing the pre-school. Nor did therespondent issue a P45 to any of the claimants. The respondent had previously sought cover for thepre-school for fifty weeks but went ahead in any case when the staff were only willing to providecover for fewer weeks. The respondent did not meet with the claimants' trade union representativein late July or August because it was the holiday period and many members of the Board of Management were on holidays. Correspondence between the claimants' trade union and the respondent's solicitor continued following this letter.

On 10th August 2006 the Co-ordinator replied to a letter for Social Welfare stating:

> The Board of Management … has (sic) an agreed 2005/2006 employment roster with…Pre-School staff from Thursday September 1st, '05 to Friday, July 28th, '06 .

> A new employment roster for 2006/2007 has been offered to the staff from Monday, September 4th 2006 to Friday, August 24th, 2007 (a fifty week calendar year) if the staff so wish to accept the terms on (sic) condition of this contract".

This notification was ultimately passed to the claimants' trade union representative who in his letter of 28th October 2006 to the respondent's solicitor stated:

> We understand the Social Welfare Offices have been advised that Contracts are available to our members from the commencement of the new school year, 4th September 2006, and in the absence of any further reply from your office, we now advise as follows.
>
> Our members [Claimant B, Claimant D and Claimant C] shall return to normal duty as and from 4th September, 2006, at the place of employment…. We also understand that POBAL have (sic) approved grant up to 2007 in keeping with established practice.
>
> Any outstanding issues between parties can be dealt with in accordance with the Industrial Relations Act, 1990, in accordance with established practice.
>
> We trust you understand and agree with our members (sic) position in this regard as we are merely responding to statements issued by the Board of Management.

In August, POBAL notified the respondent that it was putting its funding for the pre-school project on hold because of the low uptake of places as compared to the pre-school's capacity. As a result of the funding having been put on hold the respondent decided to discontinue the pre-school serviceand on 29th August 2006 the respondent wrote to the claimants individually and to their unionrepresentative informing them of the situation and that they (the three claimants) were being maderedundant. On 31st August 2006 the claimants were issued with cheques to cover their entitlementsunder the Redundancy Payments Acts 1967 to 2003 and the Minimum Notice and Terms ofEmployment Acts 1973 to 2001 together with their P45s. Statutory RP50 forms were not providedalong with the redundancy payments. The claimants subsequently cashed the cheques that had beenissued to them. At the date of the second hearing of the cases the pre-school had not re-opened. POBAL had dictated to the respondent and the decision was taken out of the respondent's hands. The Co-ordinator told the Tribunal that, as a voluntary board they found the legalities overwhelming.

Claimant D told the Tribunal that she understood, from the letter of 19th July 2006, that her job was gone. However, following receipt of the Board of Management's written statement to Social Welfare she understood they would have been going back to work and the issue would be dealt with then as happened every year. If she had not received the letter notifying her of the redundancy she would have turned up in September 2006 and would have worked for that year. She had talked to her colleagues and all of them had agreed to return to work in September 2006. They had always signed on with Social Welfare during the holidays but they could not do so in summer 2006 because the respondent had not signed the Social Welfare forms.

Claimant B told the Tribunal said that there was a total breakdown with management and the new management did not seem to know what they were doing. Following receipt of the letter of 19th July 2006 she believed that she was sacked but she had contacted the union and they were hoping for a reconciliation. She strongly believed that the redundancy was orchestrated to get rid of them. In cross-examination Claimant B agreed that the effect of the trade union's representative's letter of 28 August was that she would be returning to work in September.

Claimant C told the Tribunal that she understood from the letter of 19th July that she would not be getting back her rosters. She was unable to receive social welfare payments in August because the respondent had not signed the requisite forms. She was willing to do the fifty-week roster and was always willing and hoping to return in September 2006. In cross-examination Claimant B agreed that the effect of the trade union's representative's letter of 28th August 2006 was that she would be returning to work in September 2006

Determination

Notwithstanding the claimants' evidence as to their understanding of the contents of the respondent's letters of 19th July 2006 the majority is satisfied, from the claimants' evidence and the contents of their representative's letter of 28th August 2006, that the claimants intended returning to their positions on 4th September 2006 and that negotiations on their rosters would resume at that stage.

Due to the decision of the funding provider to put the funds for the pre-school on hold the respondent decided to close the pre-school. The Tribunal is satisfied that a genuine redundancy situation existed under section 7 (2) (a) of the Redundancy Payments Act 1967 and that the claimants' positions were redundant. By letters dated 29th August 2006 the respondent notified the claimants that their positions were redundant. Two days later the respondent forwarded the claimants their entitlements under the Redundancy Payment's Acts and the Minimum Notice and Terms of Employment Acts, 1973 to 2001. The majority finds that the dismissals were fair under section 6 (4) of the Unfair Dismissals Acts 1977 to 2001 and the claims under the Acts fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)