

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
Employee

CASE NO.UD21/2008

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

Employee  
v  
Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms E Daly BL

Members: Mr D Winston  
Mr P McAleer

heard this appeal at Cavan on 2nd September 2008

Representation:

Appellant: Mr Declan Ferry, Assistant Organiser, SIPTU  
Ashe Street, Cavan Town, Co. Cavan

Respondent: XXXX

The determination of the Tribunal was as follows:

This case came before the Tribunal by way of an appeal of a Rights commissioner decision ref: r-048603-ud-06-/JT. The employee was seeking to have the decision upset.

Respondent's Case:

The appellant was employed on a community employment scheme. The Chairman of the scheme (CS) for the County Council gave evidence for the respondent company. The appellant was an arts facilitator under the scheme with an annual contract. A new contract was signed in February 2006 to run until February 2007 but it became apparent in June 2006 that there was no viable work for the appellant, and therefore, no funding would be made available. CS dismissed the appellant in August 2006.

Two issues had arisen which led to the non-viability of the scheme. The first was that community groups who had availed of workshops the previous year did not wish to avail of them again, as they had developed their own projects. Secondly, the schools had changed the Art curriculum and no longer wished to avail of the appellant's services during school term. Efforts were made to secure other projects, such as a mural project, but these were found to be unfeasible.

CS denied that he dismissed the appellant due to the level of travel expenses paid to her by the Council. The Council would have continued the projects if schools had taken up the courses and paid travel expenses, as previously. The appellant's suggestions, sent by letter to her supervisor, were turned down due to no take up of the courses.

The Fás Community Development Officer (CDO) and Senior Community Development Officer (SCDO) for the county met with the appellant on 20<sup>th</sup> July 2006 regarding the situation. CDO gave evidence that SCDO was made aware that the appellant did not have enough work for 19.5 hours a week and therefore funding could not be continued. A new position was offered to the appellant in her own locality as an after school group assistant. This was considered a suitable alternative as the appellant had Montessori training. The appellant sought a job description for the new position and CDO posted it to her afterwards. The appellant later turned the position down.

#### Appellant's Case:

As a community artist the appellant worked with various different groups, including schools, the elderly, children with disabilities and local festivals. She had commenced her role with the Council in 2005. The appellant contended that the funding should not have stopped and that the project was still viable. She believed the reason her employment was ended was that the Council no longer wished to pay her travel expenses. The claimant was aware of the clause in her contract, which stated that withdrawal of funding in part or whole would result in a termination of her contract, but felt that this was used as an excuse rather than being the reason for her dismissal.

The problems began when her supervisor went on sick leave in April 2006 and was replaced by a new supervisor. The new supervisor told her that she would no longer receive travel expenses, which the claimant asked for in writing, but never received. The supervisor asked what she had planned for the summer. The claimant had work planned until June and wrote to her supervisor suggesting projects she might embark on but was refused and was told to stop working on a festival.

In July the appellant was told that the scheme was not viable. In August CS told her that it was due to no demand. The appellant disputed that there was no demand and denied that the school curriculum had changed stating that this was the first time she had heard that reason suggested.

The appellant denied that CDO was present at the meeting and stated that it was someone else. The after school assistant position that was offered was not suitable as she had to be at home for her children. She was previously able to work while her children were at school, and the new position represented a major change in her conditions. The appellant appealed her dismissal to the county manager, but it was upheld.

#### Determination:

Having heard evidence from both parties the Tribunal finds that the appellant was unfairly dismissed and that the employment was not terminated due to lack of funding. The fact that the reasons given at the hearing, namely that funding had been withdrawn due to (a), a change in the school curriculum, and (b), a downturn in the need for the work the claimant was offering, had not been referred to at the internal appeal hearing or the Rights Commissioner hearing bolsters this view. The Tribunal is of the view that the decision to terminate her contract was due to a change in supervisor and a change in policy to pay the claimant an overly high amount of expenses. The

Tribunal finds that the decision was not merely a refusal by Fás to fund the scheme, as per the contract, but was a decision to terminate her employment because she was an uneconomic employee and the mode of dismissal was to terminate the funding. The fact that there was no assessment of the demand by schools is salient in this regard.

The Tribunal finds that the appeal under the Unfair Dismissals Acts, 1977 to 2001, succeeds and therefore the decision of the Rights Commissioner is upset. Taking everything into account, including the appellant's refusal of an alternative position, which the Tribunal views as a refusal to mitigate her loss, the Tribunal awards the appellant €2,500.00 as compensation under that Act.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)