

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee -**Claimant**

UD840/2007

against

Employer –**Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. M. McAveety

Members: Mr. D. Morrison
Mr. J. LeCumbre

heard this appeal at Carrick on Shannon on 20 May,
16 September 2008 and 6 March 2009

Representation:

Claimant:

Mr. Eamon Cronin B.L. instructed by
Mr. Conor Maguire, Kelly & Ryan Solicitors,
Manorhamilton, Co. Leitrim

Respondent:

Mr. Don Culliton, Local Government Management Services Board,
35-37 Ushers Quay, Dublin 8

Preliminary Issue

The claimant's completed and signed T1-A form was received by the Tribunal secretariat on 10 September 2007. On that form the claimant stated that his employment with the respondent ended on 10 March 2007. Based on those dates his application appeared to be outside the required six months allowed under the relevant Acts to proceed with his case before the Tribunal.

Having heard and considered the background to this application the Tribunal accepted by a majority decision that the substantive case could proceed. That decision was primarily based on a letter from a senior executive officer of the respondent dated 20 February 2007 to the claimant. That writer stated this letter should be considered as notice of termination of the claimant's employment on 10 March 2007. There was no dispute that the claimant's employment with the respondent commenced

in March 2001. Under the Minimum Notice and Terms of Employment Acts the claimant was entitled to four weeks' notice based on those dates and those four weeks ended on 19 March 2007. Therefore the issue of time limits did not apply in this case.

The determination of the Tribunal was as follows:

The claimant was employed as a part-time retained fire-fighter from 16 March 2001. As part of the terms of engagement for retained part-time fire-fighters the section on residence states, "The residence and normal place of work of a fire-fighter shall be within distance from the Fire Station which are acceptable to the Fire Authority. Changes of residence or workplace shall be notified in writing to the Fire Authority." The respondent's position is that fire fighters were expected to respond to a fire call within five minutes of their notification of an incident by bleeper. Initially the claimant was engaged in full-time employment in Manorhamilton. This employment ended when the claimant's position was made redundant in the summer of 2004. After a period of unemployment the claimant obtained employment in the vicinity of Sligo, some sixteen miles from the fire station, in the autumn of 2004. Whilst this employment was full-time it was, initially, temporary in nature. However the claimant remained in the employment to the time of the last day of hearing of this case.

After some discussion with his station officer (SO) the claimant contacted the chief fire officer (CFO) by telephone on 29 November 2004 to inform CFO that he had taken up employment in Sligo. As a result CFO wrote to the claimant on 3 December 2004 seeking details of the claimant's new employment and how it might affect the claimant's availability as a retained fire-fighter. CFO also referred to the section of the claimant's terms of engagement on residence as previously quoted. The claimant replied to CFO on 7 December 2004 giving the details requested and asking for the chance to carry on his work as a retained fire-fighter. On 31 January 2005 the Senior Executive Officer (SE) for Corporate Services wrote to the claimant noting that his employment in Sligo was in breach of his contract of employment. CFO met the claimant on 31 January 2005 to discuss his availability as a retained fire-fighter. The claimant was given some time to find suitable alternative employment within a reasonable distance of the fire station, having told CFO that his employment in Sligo was temporary until 31 March 2005 and not knowing if his contract was to be extended beyond that date. On 7 February 2005 SE again wrote to the claimant to warn him that if he was unable to comply with the residence section of his contract of employment the respondent would have to consider termination of his employment as a part-time retained fire-fighter.

On 21 July 2005 CFO wrote to the claimant seeking clarification about the claimant's employment status in Sligo. He was again reminded of the terms of his contract in regard to the requirement for him to live and work within a reasonable distance of the fire station. Having received no reply from the claimant CFO again wrote to the claimant on 1 September 2005. The claimant replied to CFO on 7 September 2005 and stated that he was on a further temporary contract in Sligo and asking that his attendance record be taken into account when considering his position. CFO met the claimant to discuss the matter further on 13 October 2005. On 19 October 2005 CFO wrote to the claimant to confirm that, as discussed on 13 October 2005, the claimant was to be given until 31 January 2006 to regularise his employment situation to the respondent's satisfaction or CFO would recommend termination of his employment. On 30 January 2006, following intervention by the claimant's solicitor requesting an extension, the claimant was granted an extension of time to regularise his position until 31 May 2006.

On 11 July 2006 SE wrote to the claimant to inform him that it was proposed to recommend to the County Manager (CM) that the claimant be dismissed with effect from 11 September 2006. The

claimant was given the opportunity to appeal this decision to CM and exercised this opportunity in a letter of 21 July to CM. In this letter of appeal the claimant alluded to other fire officers who were in breach of the residence requirements of their contracts of employment. CM heard the claimant's appeal on 22 August 2006 and granted the claimant an extension of time to regularise his position until 10 March 2007. SE wrote to the claimant on 19 January 2007 seeking information on any developments in claimant's employment situation. The claimant replied on 23 January 2007 to the effect that, whilst he was endeavouring to make alternative arrangements, there was no change in his situation. On 20 February 2007 SE wrote to the claimant to give notice of termination of his employment as a part-time retained fire-fighter to take effect on 10 March 2007 subject to his being unable to obtain acceptable alternative employment.

The claimant's position was that other fire-fighters were kept on despite it being known that they were working similar distances from the fire station to the claimant. His position was further that his attendance record was such as to be acceptable and that his work location did not affect his attendance. The respondent's position was that the claimant's attendance record had deteriorated after he began employment in Sligo. Other fire-fighters had been dismissed for being in breach of the work location requirement of their contracts of employment. Three of these dismissals having been after the claimant's dismissal and included one of those referred to by the claimant in his letter of 11 September 2006.

Determination:

The claimant's place of work is some sixteen miles from the fire station and the Tribunal accepts that this exceeded, by a considerable margin, what might reasonably be considered an acceptable distance from the fire station. The Tribunal is satisfied that the claimant's attendance record deteriorated after he took up employment in Sligo. The claimant was warned by SE as early as 31 January 2005 that his employment was in contravention of his contract of employment and he was given considerable time, over two years, to regularise his situation before his employment was terminated on 10 March 2007. Whilst the Tribunal might have certain sympathy for the claimant, especially in these harsh economic times, the fact remains that it was always a condition of his employment as a part-time retained fire-fighter that he was required to both live and work within an acceptable distance from the fire station. For all these reasons the Tribunal is satisfied that the dismissal was not unfair. Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)