EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF: CASE NO.
Employee - appellant RP1111/2008

against

Employer - respondent

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. R. O'Flynn BL

Members: Mr. J. Killian
Mr. D. McEvoy

heard this appeal in Cork on 8 July 2009

Representation:

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Appellant(s):
In person

Respondent(s):
Ms. Jennifer Cashman, Ronan Daly Jermyn, Solicitors,
12 South Mall, Cork

The decision of the Tribunal was as follows:-

The appellant sought a redundancy payment based on service from 16 January 2006 to 3 October 2008.

The respondent contested this saying that the appellant had had a fixed-term contract from 16 January 2006 which stated that it was to "terminate at the end of the high season in 2006, which is expected to be in September". The appellant was subsequently given another fixed-term contract from 1 October 2006 which stated that it was to "terminate at the end of the high season in 2007, which is expected to be in September/October".

On 15 November 2007 the respondent wrote to the appellant offering him an extension of his contract of employment and saying that his contract end date would be "the end of our busy season 2008, which is expected to be in Sept". This letter also contained the following:

"This extension does not affect the fixed term nature of the contract.

All the original terms and conditions of the fixed term employment contract agreed between yourself and (the respondent) will continue to apply."

At the Tribunal hearing the respondent's representative stated that the appellant had worked in the respondent's finished goods area where there had been seven fixed-term workers in 2006 and in 2007. In 2008 and 2009 this number "was up to eight". The "permanent head-count" i.e. people of indefinite duration had stayed the same at all times; this had "remained static over the four years". The appellant's work remained to be done and was now being done by someone else. Consequently, the appellant's post had never been redundant and was still being done the same way as when the appellant had been employed. The appellant had applied for permanent posts over many years and had been unsuccessful. It was accepted that there had been no break in the appellant's service and that there had been a dismissal.

The appellant responded by saying that he regarded himself as a part-time person.

Asked if the appellant would be protected by Unfair Dismissals legislation, the respondent's representative replied that she was not at the hearing to meet a claim under unfair dismissals legislation, for which the appellant was now out of time and that the appellant had brought his case under redundancy legislation. She submitted that a lack of legal representation was not enough to show that exceptional circumstances had prevented the appellant from lodging an unfair dismissal claim with the Tribunal.

Giving sworn testimony, a respondent HR manager (SB) confirmed that the work that the appellant had done continued to be done and was not being done in a different manner.

Questioned by the Tribunal, SB confirmed that the respondent had twice seen fit to extend the appellant's employment and said that there had been no question about the conduct of the appellant who had received no warnings. Asked why the appellant had not been given a further extension, she replied: "Sometimes, we don't renew. The job remains. He had sought full-time posts and been unsuccessful. Other part-time employees got full-time jobs. We didn't renew him. We still had other people in the area. We would hire from external."

Questioned by the Tribunal, SB stated that there was no issue with the appellant's competency and no disciplinary warnings had issued.

Asked if the person now doing the appellant's job was still employed, SB replied that she would say so. She added: "We've had fixed-term contract workers since he (the appellant) was with us." She said that the work varied seasonally and that the respondent would deal with this by "hiring people in".

SB, telling the Tribunal that "other people were let go" after the expiry of fixed-term contracts, said: "We could be doing the same work but the people doing it could be different."

The respondent's representative submitted: that none of the five redundancy definitions applied;

that this was not a redundancy situation; and that redundancy related to a job rather than to a person.

The appellant submitted: that he had been doing the job to the best of his ability; that he had sought permanent jobs with the respondent but had been unsuccessful; that the respondent had decided that he "was no use to them"; and that he thought he was entitled to something.

Determination:

Having considered the evidence adduced and the submissions made, the Tribunal is satisfied that a redundancy situation, such as envisaged by the provisions of the Redundancy Payments Acts, 1967 to 2007, did not exist.

Accordingly, the appeal pursuant to the Redundancy Payment Acts 1967 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)