

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE
–**Claimant**

UD1428/2008
MN1378/2008

against

EMPLOYER
- **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1967 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. P. Hurley

Members: Mr. B. O'Carroll
Mr. P. Clarke

heard this appeal at Athlone on 7 July
and 21 October 2009

Representation:

Claimant: Mr. Gareth Robinson B.L. instructed by
Mr. Cormac Lohan, Lohan & Company Solicitors,
7 Garden Vale, Athlone, Co. Westmeath

Respondent:
Mr. Tom Mallon B.L. instructed by
Mr. Niall Pelly on the first day and
Ms. Sinead Casey on the second day,
both of Arthur Cox, Earlsfort Centre,
Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:

The claimant was employed from September 1995 to provide classes in teaching English as a foreign language (TEFL) classes on a part-time basis for which she was paid an hourly rate. Each TEFL class runs for two hours and it was agreed that claimant worked no more than six hours per week. The total number of hours worked by the claimant per annum varied from a low of 64 hours in academic year 2000/01 to a high of 178 hours in 2004/05. The claimant last worked in this role in May 2006.

The claimant lodged a claim of unfair dismissal with the Tribunal on 19 November 2008 and the

respondent contended, as a preliminary issue, that because the claimant had last worked as a TEFL lecturer in May 2006 this was the end of her employment and her claim of unfair dismissal had been lodged outside the period of six months from the date of dismissal as provided in section 8 (2)(a) of the Unfair Dismissals Acts and was accordingly out of time. The Tribunal heard evidence from the parties on this preliminary issue and determined that, as the respondent did not contact the claimant in writing until the human resource manager (HR) wrote to her on 10 April 2008 to confirm that there were no hours available to her to teach TEFL due to the work now being performed by permanent lecturing staff, 10 April 2008 was the date on which she was given notice of termination. As the claimant had some thirteen years of service at this point she was entitled to six weeks notice of termination thus bringing the date of dismissal for the purposes of the Unfair Dismissals Acts to 22 May 2008. The Tribunal therefore found on the preliminary issue that the claim of unfair dismissal was lodged in time and there was jurisdiction to hear the claim.

From 1995 the claimant's TEFL duties involved teaching conversational English to European students spending, typically, one semester at the respondent in exchange for Irish students studying overseas under an Erasmus programme. There are no examinations or project work in TEFL. From 2002 the make-up of the TEFL classes changed to a mixture of European students under Erasmus and Asian students who were fully fee-paying. At all times attendance at TEFL classes was voluntary for both European and Asian students. Asian students were required, as part of their individual courses of study, to undertake a foundation programme, including foundation English. The foundation English course included literature, essays and projects. There were examinations in December and May along with assessments throughout the year. The claimant, whilst qualified to run TEFL classes, does not have any qualification enabling her to conduct the foundation English classes. In 2002 the respondent employed an assistant lecturer to conduct, among other work, the foundation English classes. Over the next few years a second assistant lecturer was appointed for the same purpose as demand rose.

In 2006 a situation arose in the respondent whereby one of the two assistant lecturers employed to teach foundation English had a teaching load of fourteen hours per week. The normal requirement for an assistant lecturer is to teach for eighteen hours per week. In 2006 the decision was taken to allocate the TEFL classes, which the claimant had been conducting, to the assistant lecturer with the spare hours and the claimant was not used to conduct TEFL classes from May 2006. Whilst there is a dispute between the parties about when the claimant was told that there was no longer any requirement for her to conduct TEFL classes it is common case that nothing was put in writing about this until the letter from HR on 10 April 2008. The claimant's point of contact in the respondent was with the director of international relations (IR) and the respondent's position is that IR told the claimant in May 2006 that the assistant lecturer would be delivering TEFL going forward. The claimant's position is that she first became aware that there was no TEFL work for her in August or September 2006 when IR told her that there may or may not be TEFL work for her. This situation carried on and on without finality with infrequent contact between the claimant and IR until the claimant met HR on 12 March 2008. Arising from this meeting HR contacted IR, who was overseas on 12 March 2008, and wrote to the claimant on 10 April 2008 confirming that there was no position open for the claimant at that time.

During the summer of 2008 one of the assistant lecturers was granted a one-year career break as a result of which an advertisement was placed for an assistant lecturer in English for the period of the career break. IR brought this vacancy to the attention of the claimant who duly applied for the position. The claimant was one of the applicants for the position who was called for interview in the early autumn of 2008 but her application was ultimately unsuccessful. The claimant's position was that IR had encouraged her to apply for the position on the basis that it was really her old job and

that she was the favoured candidate for the position. The respondent's position was that IR, who was not aware, prior to the interview process, of the claimant's qualifications apart from her diploma in TEFL, was one of five on the interview board and not in a position to nominate a favourite for any position. Additionally the claimant did not meet the minimum qualification requirements of the position.

Determination:

The respondent contended that the claimant's role as a part-time TEFL lecturer ended by reason of redundancy in May 2006. In the earlier determination of the preliminary issue in this case the Tribunal found that the termination was effected in HR's letter of 10 April 2008.

Nevertheless, the Tribunal is satisfied that the claimant was dismissed by reason of redundancy. As the claimant was the only TEFL lecturer in the respondent the question of unfair selection does not arise. It is further satisfied that the position for which the claimant applied in the autumn 2008 was not the same position that she had previously held. For all these reasons the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail. The Tribunal awards €1,380-00, being six weeks' pay under the Minimum Notice and Terms of Employment Acts, 1967 to 2005

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)