

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE –**claimant**

UD338/2009

against

EMPLOYER –**respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. B. Glynn

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

heard these claims at Athlone on 22 October 2009

Representation:

Claimant: Mr. Willie Noone, SIPTU,
9th Floor, Liberty Hall, Dublin 1

Respondent: Mr. Hugh Hannon, XXX Solicitor’s Office,
Bridgewater House, Bridgewater Quay,
Islandbridge, Dublin 8

The determination of the Tribunal was as follows:

The claimant, having responded to an advertisement in the local press for temporary clerical staff in the respondent’s Athlone depot, was interviewed and commenced her employment in the respondent’s school transport section on 25 June 2007. It is common case that no contract of employment was signed at the outset of the employment. The employment was uneventful, with the claimant at all times being regarded as a good employee, until 28 January 2008 when the section supervisor asked the senior clerk to get the claimant to sign a document setting out the claimant’s conditions of employment. The claimant’s position is described as “temporary clerical assistant” and the duration as “weekly”. The respondent’s position is that this document, which the claimant signed, was to regularise her position.

In May 2008 a permanent vacancy arose for the position the claimant had been occupying on a temporary basis. The successful candidate for this permanent position had been working in the passenger transport section of the Athlone depot. This left a vacancy for a temporary officer in the passenger transport section. The services manager then offered this position to the claimant. In

making this offer he got the claimant to sign a fixed-term contract on 19 May 2008 with an expiry date of 26 September 2008. The claimant's position was that the alternative to signing the fixed-term contract was to be let go in May 2008. The respondent's position was that this contract was an extension of the claimant's existing contract of employment. The services manager was not aware that the claimant's initial contract was not of a fixed-term. The respondent's position is that the claimant was given the fixed-term contract to allow time to fill the position on a permanent basis and to cover the busy summer season. In the event the position has not yet been filled on a permanent basis.

On 19 September 2008 the claimant was given notice of termination of her employment at the expiry of the fixed-term contract and the employment ended on 27 September 2008. At this time there was still a requirement for temporary staff with the impending, within two weeks, maternity leave of another employee in the passenger travel section working in a position for which the claimant had been trained in.

Determination

Whatever contract the claimant was working under from the commencement of her employment it was not of a fixed-term. The document the claimant signed in January 2008 was not of a fixed-term and it was the clear evidence of the services manager that the contract offered to the claimant in May 2008 was to be an extension of her existing contract. In such circumstances it was not open to the respondent to put the claimant on a fixed-term contract and rely on the expiry of this fixed-term to claim exclusion from the Unfair Dismissals Acts under section 2 (b) of those Acts. It follows, there being no substantial ground justifying the dismissal, this must be an unfair dismissal. The Tribunal awards €8,600-00 under the Unfair Dismissals Acts, 1977 to 2007

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)