

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM(S) OF:  
EMPLOYEE - claimant

CASE NO.  
UD303/2009  
MN304/2009

WT126/2009

against

EMPLOYER - respondent

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2007  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. P. O'Leary BL

Members: Mr. T. O'Sullivan  
Ms. M. Mulcahy

heard these claims in Dublin on 20 October 2009

Representation:

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Claimant(s) :

Ms. Rosemary Mallon BL instructed by  
Ms. Teresa Howlett, Meagher Solicitors,  
8 Exchange Place, IFSC, Dublin 1

Respondent(s) :

Mr. Andrew Smith, A & L Goodbody, Solicitors,  
IFSC, North Wall Quay, Dublin 1

The determination of the Tribunal was as follows:-

The claim

The claimant worked in a hospital (hereafter referred to as SPH) from 6 October 2007 to 23 January 2009. He was employed under a contract of service as a quality administration specialist. He was

placed at SPH by an agency (hereafter referred to as JRA) registered under the Employment Agency Act, 1971. At all material times he provided his services to SPH. Accordingly, it was submitted that the claimant was an employee of SPH for the purposes of an unfair dismissal claim by reason of the provisions of Section 13 of the Unfair Dismissals Act, 1993, after his employment was purportedly terminated on the grounds of redundancy.

The defence

The claimant worked at SPH as an agency worker through JRA (the abovementioned recruitment agency). He began working at SPH in October 2007 as a temporary administrator in the accreditation department on a week-to-week basis as required by SPH. His position was not that of quality administrator as alleged. During his time at SPH the claimant submitted timesheets to JRA on a weekly basis and received payment from JRA in respect of all hours noted as worked.

During his time at SPH the claimant applied for a number of permanent internal vacancies (four in all). He was at all times aware that his position was a temporary one.

In May 2008 SPH advertised for the role of Specialist Administrator (Compliance). (The closing date was 6 June 2008.) The claimant applied for this position and was one of four candidates called for interview from a total of twenty-five applicants. (The interview process was delayed due to unforeseen circumstances. On 1 July 2008 all candidates were informed in writing about the delay.) The claimant was interviewed for the role on 2 September 2008. (On 6 October 2008 all candidates were sent a written apology for a further delay the other three of the four candidates were called back for a second interview. On 14 November 2008 the claimant was told by the HR manager that he had not been successful in his application and that written confirmation would follow (which it duly did on 18 November 2008).

On 17 November 2008 AH (SPH's administration supervisor) informed the claimant that the temporary administration role was coming to an end because of the new appointment but that he would be given as much notice as possible. The claimant was also informed at that stage that JRA would also be informed of this so that the agency might have time to place him elsewhere. The claimant's engagement at SPH ended on 13 January 2009.

It was submitted that at all times the claimant was aware that his position was temporary and that, from at least May 2008, the temporary administrative position which he performed would come to an end upon filling of the permanent vacancy for Specialist Administrator Compliance.

SPH denied that it had any outstanding obligations to the claimant under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, or the Organisation of Working Time Act, 1997.

### **Determination:**

The claim lodged under the Organisation of Working Time Act, 1997, is dismissed for want of prosecution.

The claim lodged under the Minimum Notice and Terms of Employment Acts, 1973 to 2005, is dismissed because it was not established that there had been any breach of this legislation.

Regarding the claim lodged under the Unfair Dismissals Acts, 1977 to 2007, the Tribunal, after hearing all the evidence adduced, had to consider whether or not the respondent would have used the same procedures if it had known that the claimant was an employee. Even if the claimant's job might have been redundant the respondent's procedures were wrong in that the respondent afforded the claimant no opportunity to appeal to the respondent to invoke procedures to avoid terminating his employment.

Therefore, the Tribunal finds that the respondent failed to recognise the implications of Section 13 of the Unfair Dismissals (Amendment) Act, 1993, and subsequently failed to implement any adequate procedures for the claimant before terminating his employment.

The Tribunal finds that the claim under the Unfair Dismissals Acts, 1977 to 2007, succeeds and, in all the circumstances of the case, deems it just and equitable to order that the respondent pay the claimant compensation in the amount of €25,000.00 (twenty-five thousand euro) under the said legislation.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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