

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.  
RP1709/2009

EMPLOYEE *-appellant*

Against

EMPLOYER *-respondent*

Under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. T. Ryan

Members: Mr M. Murphy  
Mr J. Moore

heard this appeal at Navan on 6th April 2010

#### **Representation:**

Appellant: xxxxxxxx

Respondent: Mr. Marcus Dowling B.L. instructed by Gleeson McGrath Baldwin Solicitors,  
29 Anglesea Street, Dublin 2

The decision of the Tribunal was as follows: -

#### **Respondent's Case**

The supervisor for the Community Employment Scheme had responsibility for all the participants in the scheme including the appellant. Through training the participants are made 'work ready.' The participants are placed in voluntary organisations for a definite duration. The appellant was placed as a caretaker in a local voluntary school. Three other participants were also placed at the school at the same time as the appellant, all of whom have also finished their placement in the school. The appellant's participation in the scheme was coming to an end when the supervisor was made aware that the voluntary school intended to offer the appellant direct employment.

People participating in a Community Employment Scheme work 19.5 hours per week paid directly by the respondent. The appellant signed a number of fixed term contracts. The respondent had no

further input into the appellant's employment after his placement in the Community Employment scheme came to an end.

### **Appellant's Case**

The appellant understood that at the end of each year he was informed if he was being kept on in the scheme. The appellant asked the respondent how much longer he would be able to participate in the Community Employment Scheme. The respondent informed the appellant in March that he would be finished on the 3<sup>rd</sup> of April. The principal of the voluntary school that the appellant was placed in told him that when the current caretaker retired he would be offered the position permanently. The offer was not made to the appellant, as the caretaker did not retire.

The voluntary school offered the appellant a cleaning position which his wife accepted as he required more hours than that they were offering. The voluntary school applied for a year's extension for the appellant after his three years placement was finished.

### **Determination**

At the outset the parties agreed that the correct respondent is the Community Employment Scheme for the purpose of this determination. A supervisor on behalf of the respondent gave evidence that the appellant was engaged in a training programme funded by FAS. The appellant was placed in a voluntary school and commenced work initially on a one-year contract commencing on the 11<sup>th</sup> April 2005, the first of three contracts. The appellant fulfilled the three one-year contracts and at the request of the voluntary school the appellant's placement was extended by one year. The appellant was aware that the voluntary school had applied for the one-year extension. The appellants contract states that,

*'3.2.20 Sponsors are advised that since all engagements are limited to one year, subject to re-engagements on new contracts for additional periods of one year maximum, the provisions of Unfair Dismissals legislation should not apply.'*

In order to claim Redundancy the dismissal of an employee must be wholly or mainly due to section 7(2) of the Redundancy Payment Act 1967;

**7. —(2)** For the purposes of subsection (1), an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to—

(a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or

(b) the fact that the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease or diminish

The appellant was a participant in a Community Employment Training scheme, his position was

not made redundant, therefore the Redundancy Payments Acts 1967 to 2007 do not apply, and accordingly the appeal fails.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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