

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

- *claimant*

CASE NO.
RP636/2009

Against

EMPLOYER
EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr D. Herlihy

Members: Mr J. Hennessy
Mr T. Kelly

heard this appeal at Thurles on 10th March 2010

Representation:

Appellant: Mr. Andy Pike, Impact, Assistant General Secretary, The Public Sector Trade Union, Father Mathew Quay, Cork

Respondent: Ms. Ger Moriarty, Local Government Management Services Board, Olaf House, 35-39 Ushers Quay, Dublin 8

The decision of the Tribunal was as follows:-

Background

At the outset of the hearing, both parties outlined their positions to the Tribunal. The respondent did not agree that a redundancy situation existed based on the fact that the claimant's final contract with the respondent was for a specific purpose and his employment with the respondent ceased on completion of that contract. The claimant's representative told the Tribunal that the claimant had been employed on a series of fixed term contracts, accruing more than 4 years service, which is sufficient to qualify for a redundancy payment. The respondent explained that the contracts were for different work and different areas.

Respondent's case:

The Tribunal heard evidence from SK, Senior Executive Officer in HR, who is involved in drawing up contracts of employment for the respondent. The respondent is a public sector employer. In relation to the claimant's contract, he was employed on a fixed term contract to carry out roads functions. The respondent took a decision to solidify and a permanent post, Technician Grade 1 became available, which was filled by a confined competition. A number of staff competed, including the claimant, who was placed fourth on the panel of successful candidates. If the first

three successful candidates refused the position it would be offered to the next available candidate on the panel.

At the time of appointment to the post, the successful candidate Mr. C., was unavailable due to his involvement in the completion of another project for the respondent. The number two and three candidates were not available to appoint to the post temporarily while the respondent waited on Mr. C. to finalise the other project. Therefore the claimant was offered the available position on a specific purpose contract which stated that he would be employed in the position until Mr. C. became available to carry out the duties of the post. SK told the Tribunal that the claimant would not have been offered the position if he had not been a successful candidate in the competition stage.

SK told the Tribunal that the respondent, like all public sector employers at the moment, has been affected by financial troubles. This has impacted on the workload of contracts but in terms of staffing in road function areas, the numbers have remained the same. The road work is essential work which has to be carried out. Staff numbers have diminished elsewhere but that cannot be attributed to the downturn as it would have occurred as contracts finished.

During cross examination SK explained that over the previous two years, approximately 30-35 posts would have been lost with the respondent. This was due to seasonality, maternity leave, retirements, etc. SK told the Tribunal that Mr. C could not take up the available post immediately because he was carrying out work with a rural water project that he had started. When Mr. C became available he was transferred over to the Technician Grade 1 post. His old post on the water project was not filled because he had brought the project to a specific stage. SK explained that the work was continuing but it had evolved. SK explained that an engineer was transferred in from Planning to carry out the next stage of the water project.

Claimant's case

The Tribunal received written submissions and documentary evidence on behalf of the claimant at the hearing but did not hear oral evidence from the claimant on the day of the hearing.

Determination

Having considered all of the evidence and submissions received from both parties the Tribunal is satisfied that the job for which the claimant was employed is still in existence and the claimant was employed on a fixed term contract for a specific purpose, specifically to carry out the duties of the post until the successful candidate became available. Therefore the Tribunal finds that a redundancy situation does not exist and the claim under the Redundancy Payments Acts, 1967 to 2007 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

