

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE -*Claimant*

CASE NO.  
UD813/2009

against  
EMPLOYER -*Respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. J. Lucey

Members: Mr. J. Hennessy  
Ms. H. Kelleher

heard this claim at Cork on 14th April 2010

#### **Representation:**

Claimant: In Person

Respondent: Mr. Eoin Clifford B.L. instructed by Mr. Shane Crossan, O'Flynn Exhams,  
Solicitors, 58 South Mall, Cork

#### **The determination of the Tribunal was as follows:**

##### Respondent's Case:

The Registrar and Vice-President of Academic Affairs gave evidence to the Tribunal. The Head of the Education Opportunities Department (hereinafter EOD) was absent from August 2007. EOD consisted of a number of different areas and the duties were divided between other staff members including the witness. Part of the role entailed meeting with companies and exploring what educational needs they had for their employees. The respondent then sought to source staff to teach the required courses.

The claimant was employed as a Research Assistant in October 2006. When the witness became involved in the EOD department, the claimant continued to deliver on projects.

In the area of chemical and biomedical engineering there was an ongoing demand for staff to be trained in good manufacturing practice. Validation was a new area in demand by the manufacturing industry and the respondent sought funding for an assistant lecturer of Good Manufacturing Practice and Validation. The position was subsequently advertised with a closing date of the 22<sup>nd</sup> August 2008. The claimant and other casual lecturers applied for this post. The claimant was interviewed and was placed fifth on the panel. This was communicated to the

claimant by letter dated 5<sup>th</sup> December 2008.

As a result of the absence of the Head of EOD, programmes were streamlined and marketing was reduced. The claimant was informed his employment would cease in January 2009. The witness outlined that a number of contracts were provided to the claimant after his employment terminated.

During cross-examination the witness confirmed that he was given responsibility for one third of the EOD department. He confirmed that he met with the claimant when EOD became his responsibility but at that time it was his priority to find out the number of hours that each person was teaching and the meeting was not in relation to employment issues. It was put to the witness that he sent an email to the claimant telling him to contact human resources, as the claimant had not received a contract.

It was put to the witness that in October 2007 the claimant was named as a member of the lecturing staff in a new course proposal. The witness stated that the proposal document is prepared for submission to have the course validated. It was put to the witness that this gave the claimant an expectation that his employment would continue. The witness stated that even if a course is given validation it does not mean that resources for the programme are guaranteed.

The Human Resources Manager (hereinafter HRM) gave evidence to the Tribunal. The claimant was employed as a Temporary Research Assistant on a fixed-term contract from 1<sup>st</sup> November 2006 to the 2<sup>nd</sup> February 2007. The second contract was from 3<sup>rd</sup> February 2007 to 31<sup>st</sup> May 2007. The third contract was from 1<sup>st</sup> June 2007 to 31<sup>st</sup> December 2007. Section 4 of the claimant's contracts outlined the duties involved with the role. The claimant was paid at the casual part-time teacherrate.

The claimant was required to work 21 hours per week. The Head of Department could give a number of lecturing hours to a research assistant if the research assistant was agreeable to lecturing. This was a casual type of arrangement between the Head of Department and the individual.

The respondent was under instruction to reduce part-time employees and change to full-time positions where possible. As a result a decision was taken to appoint a lecturer to the good manufacturing practice and validation course, which would result in a reduction in teaching hours. The claimant did not raise any issue when this position was advertised. The interviews for the position were carried out strictly in accordance with the guidelines and the quality of candidates was very high. The claimant was placed fifth on the panel. When the successful candidate was appointed no further teaching hours were available.

A letter dated 7<sup>th</sup> January 2009 was subsequently sent to the claimant informing him of this. He had been previously informed in December that he was placed on a panel as a result of his interview for the position. The claimant was aware that as a result of the position being filled there would be no lecturing hours available to him. The last line of the letter stated, " we are reviewing and processing your application for a pro-rata part-time assistant lecturer contract and we will be in contact with you regarding this matter." HRM met with the claimant and it was agreed to provide the claimant with pro-rata contracts. The claimant's last pro-rata contract was for the position of pro-rata part-time assistant lecturer from the 1<sup>st</sup> September 2008 to 28<sup>th</sup> February 2009 for four hours per week. The contracts were first sent to the claimant in February 2009.

The claimant was involved in a number of teaching projects and he also visited companies. The hours he worked after 6pm carried a premium. As the Head of Department was on leave, Human Resources met with the claimant and agreed the hours that he had worked in carrying out his duties. The claimant was paid in arrears when the hours were adjusted upwards. The arrears were paid in February and April 2009. HRM acknowledged there was a delay in paying the claimant but a liberal view of the claimant's hours was taken. The claimant's hours were somewhat unorthodox in that he did not have normal teaching hours.

During cross-examination it was put to HRM that the claimant had commenced employment with the respondent as a lecturer and not as a research assistant. This was disputed.

It was put to HRM that the claimant had regular lecturing hours and lectured for the same hours each week. HRM stated that he used the term "casual part-time" as it was a term used in the sector. It was put to HRM that for a position to be considered casual, the hours of work must be irregular. HRM stated that it was subsequently conceded and the claimant was given pro-rata contracts for the periods in question. It was put to HRM that the claimant had received a series of contracts after his employment was terminated despite the fact he had over two years continuous service. HRM replied that the fixed-term contracts were for set periods and as the claimant's hours had varied, the employment was not deemed continuous.

It was put to HRM that the contracts did not reflect what was happening on the ground. It was put to HRM that the claimant was asked to attend a work-related meeting on 3<sup>rd</sup> September 2008 but the contract given to him stated his employment had ended at that time on the 31<sup>st</sup> August 2008. HRM replied that the claimant's employment was renewed after that date. It was put to HRM that the claimant was not informed by the human resources department that he was on a series of fixed-term contracts and that he was not issued with objective grounds of the reason for non-renewal. This was disputed by HRM. It was put to HRM that the claimant had no way of knowing that his position with the respondent was in jeopardy. HRM replied that the claimant knew his position was in jeopardy as he applied for the position of assistant lecturer of the good manufacturing practice course.

#### Claimant's Case:

A union branch Chairperson gave evidence to the Tribunal that the claimant contacted her in October 2007. The claimant at that time explained to her that he was being paid a part-time casual rate and had requested a contract from human resources. The witness told the claimant that she would place his name on a list and attempt to get him onto a pro-rata contract, as a person teaching regular hours on a regular basis is entitled to a pro-rata contract for the hours they teach. The claimant was entitled to have a pro-rata contract and this was important because after four contracts she was entitled to a contract of indefinite duration. Also a pro-rata contract contains terms and condition and explains under what circumstances the contract may not be renewed and it sets out the exact terms and condition of employment. There were six different meetings from December 2006 to October 2007 where the claimant's case was discussed.

The respondent was under budgetary constraints and there was to be a reduction in the number of positions. The union agreed with the respondent a policy of re-deployment but this only related to people on fixed-term pro-rata contracts, which the claimant had not been given at that time. If the claimant had full pro-rata contracts in place the respondent would have been obliged to look at re-deployment and re-training for the claimant when his employment was coming to an end.

The witness believed the claimant had the expectation of continuing in his employment. He was given a document regarding a course proposal and the development of that course.

During cross-examination the witness explained that part-time casual lecturers get paid only for every hour they stand lecturing and are not paid when they are on holidays. Casual hours are identified as being irregular and unpredictable. It was put to the witness that the claimant was not entitled to a contract of indefinite duration, as he did not have four years service.

In reply to questions from the Tribunal, the witness stated that if the claimant were given a contract for each period he would have known that his employment was subject to renewal on objective grounds.

The claimant gave evidence that he applied for a position that was advertised as a part-time lecturing position. There was no mention of it being for a fixed-term. The Head of the Department interviewed the claimant. The claimant drew the Tribunal's attention to a Department of Education Circular regarding recruitment procedures for new employees, which stated that, "these arrangements will not apply on third or subsequent contracts." The claimant subsequently commenced employment in October 2006. The claimant was given the maximum number of hours (21), which were to include lecturing hours.

When his manager (the Head of EOD) was absent for the academic year 2007/2008, the lecturing hours within EOD were allocated to full-time permanent staff within the first witness' department. The claimant's hours reduced from 17.5 hours to 14 hours despite the fact that the respondent continued to advertise positions. It was in or around this time that the claimant first requested his terms of employment. He made repeated requests from October 2007 and throughout 2008 for the terms of his employment but it was not issued to him.

In September 2008 EOD was again transferred to another department manager. Again the available lecturing hours were first allocated to the new manager's department and then to the claimant. The claimant's hours reduced further. The respondent continued to advertise for new lecturing staff at this time. The claimant continued to request the terms of his employment and he attended a meeting with HRM in December 2008 in relation to this issue, the reduction in his hours and the allocation of teaching hours. The claimant was not provided with terms of his employment until February 2009, after his employment had terminated.

The claimant was shocked when his employment was terminated, as he believed his employment would continue indefinitely, as he was working on a number of continuing projects. He was asked to undertake a formal education course in NUI Maynooth as he was expected to be lecturing in the area of adult education into the future. The respondent funded this course in 2008. The claimant also stated that he had attended a course review meeting in June 2007 with senior managers. The claimant was identified at this meeting as one of the lecturers of a new degree course due to commence in September 2008.

The respondent advertised many positions both before and after the termination of the claimant's employment. The claimant did not think it was right for his employment to be terminated just because he applied for another position and was unsuccessful.

**Determination:**

All oral evidence having been heard on 14th April 2010, a final decision on the matter was postponed on the basis of written submissions being made by both the Applicant and Respondent and arising from the submissions made; a consultation of the division that heard the case was convened for Monday 23rd August 2010. The Tribunal is satisfied that the claimant was aware that the role he was applying for was an expansion of the role that he held at that time and that the dismissal of the claimant was fair in all the circumstances. The claim under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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