

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:
EMPLOYEE

CASE NO.
UD1706/2009

- appellant

against
EMPLOYER

- respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. A. Moore

heard this claim at Donegal on 22nd April 2010
and 8th July 2010

Representation:

Claimant(s) : Mr Alastair Purdy, Purdy Fitzgerald, Solicitors, Kiltartan House, Forster Street,
Galway

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

The determination of the Tribunal was as follows:-

On the first day of the hearing the respondent raised a preliminary issue. The respondent legal representative explained that the claimant had been employed on a series of fixed term contracts and was not eligible to bring a claim under the Unfair Dismissals Acts, 1977 to 2007. The claimant commenced employment on 22nd August 2005 on a one year fixed term contract as a graduate engineer. This contract was renewed on the 22nd August 2007, during the course of the second contract the claimant resigned and took up a new fixed term contract as an assistant engineer with the respondent. This contract commenced on the 22nd January 2007 and was renewed on the 22nd January 2008 and subsequently extended to the 31st March 2009. The fixed term contracts included a waiver of the Unfair Dismissals Acts 1977 – 2007.

In November 2008 the respondent informed the claimant that due to the financial constraints on them it would be unlikely that they could extend his contract beyond the 31st March 2009. The claimant's employment was terminated with the respondent on this date and he was paid redundancy. At the time there were a number of fixed term contracts not renewed.

The claimant's representative maintained that the purpose of the fixed term contracts issued to the claimant by the respondent was to avoid the claimant acquiring rights under the Unfair Dismissals Acts 1977 – 2007. However the respondent had paid the claimant his redundancy this in itself established the claimant's continuity of employment.

The respondent stated that anyone with more than 104 weeks service are entitled to redundancy. The

Tribunal at this juncture decided to hear the case in its entirety and they withheld their decision on the preliminary issue.

Respondent's Case:

On the **second** day of the hearing the then HR Manager gave evidence on behalf of the respondent. The claimant had applied for a position as a Graduate Engineer in 2005. He was successful and was given a fixed-term contract for one year with the National Road Design Office (NRDO) in Donegal town. It was not a permanent position and he assisted a Senior Engineer. The NRDO is funded by the National Road Authority (NRA) on a yearly basis and they also approve 100% of staff numbers. Permanent and temporary staff were recruited over the years. These positions were advertised and panels were set up for a period of 2 years. As the NRDO received more funding the claimant's fixed term contract was renewed by recommendation of his Supervisor for 2006.

They received extra funding in 2006 and it was decided to set up a panel of Assistant Engineers. The claimant applied and was successful and offered a one-year contract even though he was in the middle of his fixed term contract as a Graduate Engineer. His position as Graduate Engineer was offered to another person on that panel. His contract as Assistant Engineer was renewed in 2008.

In July 2008 the Irish government announced that all public services staffing numbers were to be reduced by 3%. The respondent had to review all its temporary contract holders. Meetings were held at local and national level to discuss the matter. Unions were consulted. Vacancies were not filled; overtime and allowances were cut to save on payroll costs.

On November 24th 2008 he was informed by letter that his contract was to be extended for a period of 2 months to March 31st 2009. On December 16th 2008 the claimant's Supervisor wrote to the Director of Roads and Transportation requesting the claimant's contract not be terminated, as he was confident that a sufficient national road grant would be available in 2009. It was not unusual for a senior member of staff to request a good member of staff remain on but the respondent could not concede to the request as staff levels had to be reduced and funding would be decreased.

In January 2009 the NRA announced the amount of funding to be allocated and there was a significant reduction. It was also advised to cut staffing levels. All contracts were reviewed and it was decided fixed term contracts would not be renewed. Staff were informed what was going on. The claimant was informed by letter dated March 4th 2009 that his contract would not be extended and he would terminate his employment on March 31st 2009.

Staffing levels in the NRDO reduced from 36 to 23 as 13 fixed term contracts were not renewed. The claimant's solicitor wrote to the witness on March 6th 2009 raising a number of queries in respect of the termination of the claimant's employment. The respondent replied on March 11th 2009. There was no alternative post available for the claimant and he was paid his statutory redundancy.

On cross-examination he stated that funding had been reduced from € 21 million to € 10 million. Between 2001 and 2008 there were more temporary staff recruited than permanent ones. As permanent posts were advertised for interviews. When asked why some posts were given a two-year contract and not a one-year like the claimant's he replies that it was on a small number basis where it was likely that funding would continue for the following year. When the name of a staff member who received a two-year contract was named to the witness he said that this person had longer service than the claimant. Another person named with a two-year contract was employed in a different section to the claimant.

When asked he said they had not discussed voluntary redundancy of the last in last out policy (L.I.F.O.).

The Director of Roads and Transportation gave evidence. He explained that he oversaw 4 divisions in the respondent company. The NRDO was set up in 1999 and were responsible for 9 counties in the country. It was funded 100% by the NRA on a yearly basis and they determined staff levels. If more

staff were required the witness looked at 3 aspects - the workload, to know if funding was available and NRA approval. He explained that the claimant's contract had been extended, as the respondent had been very busy at the time. He was aware the claimant's contract had been extended for a further 2 months; he had requested it at senior management level. After the claimant was made his redundant other staff carried out his work.

On cross-examination he stated the NRDO decided who would be made redundant and not the NRA. He explained that contracts had been extended for 2 months to see how much funding they would be allocated. When asked he said the criteria for the redundancies was the temporary contracts.

Claimant's Case:

The claimant gave evidence. He commenced employment as a Graduate Engineer in August 2005. He was later promoted to Assistant Engineer and continued to work on the same road scheme – Letterkenny to Lifford. He applied for any permanent positions that were advertised and was sure he would have enough service to be offered a contract of indefinite service (CID) as he was nearing the 4 years service requirement.

He was surprised to get the letter of November 24th 2008 extending his contract for 2 months and then he would be terminated on March 31st 2009. He could not understand why he was to be let go when there was still funding in place for the project he had been working on. His supervisor had informed staff that contracts would not be renewed. There was no conversation of any alternatives. He was not given an opportunity to appeal the decision. He gave evidence of loss.

On cross-examination he stated he had worked on other schemes for the respondent.

Determination:

The Tribunal has carefully considered all the evidence adduced and submissions over the two days of this hearing. The Tribunal finds that dismissal took place because of the termination of the claimant's fixed term contract and the Tribunal finds the selection process used by the respondent in this case was reasonable given all the circumstances of the case.

Accordingly the claim under the Unfair Dismissals Acts, 1977 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)