

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE

CASE NO.  
UD205/2009

against the recommendation of the Rights Commissioner in the case of:

EMPLOYEE

-v-

EMPLOYER

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley  
Members: Mr. W. O'Carroll  
Mr J. Maher

heard this appeal at Limerick on 9th February 2010

#### Representation:

Appellant:

Mr. Maurice Hearne, Siptu, Lapo Branch, Liberty Hall,  
Dublin 1

Respondent:

Local Government Management Services Board, Local  
Government House, 35-37 Ushers Quay, Dublin 8

This case is before the Tribunal by way of an employee appealing the Recommendation of a Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007, ref: (r-062920-ud-08/POB; UD205/09). The employee is the appellant and the employer the respondent.

Background:

The respondent is a local county council and the employee an engineer.

The appellant's position is that he was initially employed as a graduate engineer (GE) and progressed to resident engineer (RE). His contracts varied in time, initially for 12 months but then reduced in time considerably, sometimes to just one month. His final contract was for two years from September 2005. The appellant does not accept that he was employed under a fixed term contract within the meaning of the Protection Of Employees (Fixed Term Workers) Act 2003.

The respondent's position is that the appellant was employed on a series of fixed term contracts, on a number of capital projects between 03<sup>rd</sup> July 2000 and 29<sup>th</sup> September 2007. The appellant commenced employment on 3<sup>rd</sup> July 2000 as a temporary Graduate Engineer (GE) on a particular

project. He then applied for and was successful in being appointed to a position of temporary assistant resident engineer (ARE) on 21<sup>st</sup> March 2001, for two particular works. On 24<sup>th</sup> June 2003, he then was appointed to temporary RE for a project. The appellant accepted a number of extensions to his contract up to and including 30<sup>th</sup> September 2005, by which time the works had been completed.

The appellant had applied for the position of temporary RE and on 01<sup>st</sup> October 2005 he accepted a temporary RE position. This latter position established for the purposes of carrying out work in several particular roads areas.

The respondent's HR dept. wrote to the appellant on 18<sup>th</sup> September 2007 confirming his contract would cease on 29<sup>th</sup> September 2007. His employment ended on 29<sup>th</sup> September 2007. The claimant failed to contact the respondent to ascertain whether or not his position had become redundant or and did not enquire whether he was entitled to any redundancy payments.

The respondent relies on the provisions of S.2 (2) of the Unfair Dismissals Acts 1977 to 2007. A clause in the appellant's contract which was signed by the Appellant on the 07<sup>th</sup> day of November 2005 and signed by the respondent on the 08<sup>th</sup> day of November 2005. Clause one of the contract provides "This is a Fixed Term specific purpose contract of employment and therefore the provisions of the Unfair Dismissals Acts 1977 – 1993 shall not apply to the termination of this contract, where such termination is by reason only of the expiry of this Fixed Term specific purpose".

The respondent contends that on a reading of the above recited clause that the appellant was not unfairly dismissed as the 1977 Act and the 1993 amendment Act exemptions apply to the particular circumstances of the claimants' employment. In this submission it is argued that there is no attempt to avoid the Acts was not the case. The respondent called two witnesses: the senior engineer of the roads section and the senior executive officer in the HR department.

The Tribunal heard evidence from the respondent's two witnesses and the Tribunal has heard extensive evidence from the appellant. Both representatives gave closing statements.

The respondent contended that the Unfair Dismissals Acts 1977 to 2007 do not apply; the appellant gave evidence that he had signed consecutive contracts. The contracts were project specific and were legitimate short-term contracts.

**The appellant's representative contended that under the provisions of the 2003 Act (Protection Of Employees (Fixed Term Workers) Act 2003), the appellant could have received a contract of indefinite duration after four years. In this context the provisions of Section 2 (2) of the (Unfair Dismissals Acts 1977 to 2007) must be considered. The appellant in this submission was employed with multiple contracts to avoid liability under the Act.**

It must be noted the evidence of the respondent HR person that the appellant had in 2003, competed for a permanent position of Executive engineer and was successful, he was offered the position and declined the position and opted to remain as resident engineer (temporary).

**Determination:**

The claimant was employed on a series of fixed term contracts from July 2000. His last contract was from 01st October 2005 to 29<sup>th</sup> September 2007.

**The Protection of Employees (Fixed-Term Work) Act 2003 provides:**

Successive  
fixed-term  
contracts.

**9.**—(1) Subject to *subsection (4)*, where on or after the passing of this Act a fixed-term employee completes or has completed his or her third year of continuous employment with his or her employer or associated employer, his or her fixed-term contract may be renewed by that employer on only one occasion and any such renewal shall be for a fixed term of no longer than one year.

(2) Subject to *subsection (4)*, where after the passing of this Act a fixed-term employee is employed by his or her employer or associated employer on two or more continuous fixed-term contracts and the date of the first such contract is subsequent to the date on which this Act is passed, the aggregate duration of such contracts shall not exceed 4 years.

(3) Where any term of a fixed-term contract purports to contravene *subsection (1)* or (2) that term shall have no effect and the contract concerned shall be deemed to be a contract of indefinite duration.

**(4) Subsections (1) to (3) shall not apply to the renewal of a contract of employment for a fixed term where there are objective grounds justifying such a renewal.**

(5) The First Schedule to the Minimum Notice and Terms of Employment Acts 1973 to 2001 shall apply for the purpose of ascertaining the period of service of an employee and whether that service has been continuous.

The claimant was employed on various contracts of various durations and these contracts were purpose specific.

The claimant has not in the unanimous opinion of the Tribunal given evidence to displace the respondent's contention that there were objective grounds justifying the non-renewal of the last contract. Therefore, the appeal from the rights Commissioners' decision ref : (r-062920-ud-08/POB; UD205/09) under the Unfair Dismissals Acts, 1977 to 2007, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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