

EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE
-first named claimant

UD548/2010
RP739/2010
MN490/2010

EMPLOYEE
Co. Cork **-second named claimant**

UD555/2010
RP748/2010
MN495/2010

against

EMPLOYER **-respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. K. Buckley

Members: Mr. D. Hegarty
Mr. D. McEvoy

heard this claim at Cork on 30 March 2011

Representation:

Claimant: Both in person

Respondent: Mr. David Browne, McNulty Boylan & Partners Solicitors,
26/28 South Terrace, Cork

The determination of the Tribunal was as follows:

At the outset both claims under the Unfair Dismissals Acts, 1977 to 2007 were withdrawn.

The claimants began to work for the respondent as language teacher/ teacher training specialists from September 2000 and March 2002 respectively. Initially both claimants were employed on a sessional (hourly) basis and were not in receipt of written contracts of employment until when they were presented with fixed-term probationary contracts for a twelve-week period from 30 June 2008. Both claimants having satisfied the probationary requirements received fixed-term contracts with the final ones commencing on 29 January 2009 until 17 December 2009. These contracts offered a minimum of twenty hours work a week. The claimants were the only teachers employed by the respondent on this type of contract, the other five teachers were employed on the casual basis on

which the claimants had previously been employed.

On or about 27 November 2009 the second named claimant approached the academic manager (AM) in search of a letter from the respondent giving a statement of her income in a housing related matter. The respondent's director was on maternity leave and AM referred the second named appellant to the centre manager (CM) who handled payroll and administration. A few days later AM told both claimants that their contracts were not going to be renewed due to a shortage of work and henceforth they were going to be employed on a casual basis. The claimants sought to get this confirmed in writing and on 2 December 2009 CM wrote to the claimants inter alia in the following terms:

Her current fixed term contract runs until December 18th 2009 and will not be renewed immediately due to a reduction in the availability of teaching assignments. The respondent will however be in a position to offer her teaching assignments as a casual worker from January 4th 2010.

The respondent's position is that the letters were not authorised by the director, as CM was unable to contact the director before issuing them.

On 3 December 2009 the first named claimant sent an email to CM on behalf of both claimants in which it was pointed out that the claimants had sought advice from social welfare and were now of the opinion that they were entitled to a redundancy package. They asked if CM had any idea about such package. There were two telephone calls between the claimants and the director on 11 December 2009. During these phone calls while it is common case that the director told the claimants their fixed-term contracts were not to be renewed the respondent's position is that the director told the claimants that there would, at least initially, be at least the same amount of work for them as previously.

On 16 December 2009 the director wrote to both claimants in the following terms:

There seems to be some confusion on your part in relation to your continuing in employment. Please note that you remain in employment here. I do not know as I stated in my conversation with you in early December, whether the workload will be the same next year in view of the economic climate. We will take things a day at a time.

However, all is well at the moment and you might please turn up for work as usual as you are certainly not being made redundant.

On 18 December 2009 the first named claimant sent an email to AM on behalf of both claimants in the following terms:

This is from both of us and it's just to re-confirm what we said to the director i.e. that we are not in a position to accept the casual/day to day work on offer. We have been advised that her letter and phone calls provide no material changes and, in fact, could be seen as intimidation. Unfortunately now it's over to the tribunal.

The claimant's did not return when the respondent resumed operations on 4 January 2010 and in February 2010 the respondent placed advertisements for teachers to replace the claimants. In the event as no suitable applications were received the respondent gave further training to existing staff members who were then able to replace the claimants.

Determination

The Claimants' claims are for redundancy and minimum notice, having withdrawn their claims for unfair dismissal.

It was apparent from the evidence that there was quite a bit of confusion in relation to this matter. The Claimants were seeking the renewal of fixed term contracts notwithstanding the fact that they were employed for nine years and seven years respectively and accordingly entitled to full time Contracts of Employment. The Respondents did not dissuade them in seeking annual Contracts.

The Respondent's Director gave evidence that she was on maternity leave when the letter of 2 December 2009 was issued. However, she confirmed in her evidence that she would have indicated to the Claimants that she was not prepared to offer them another fixed term Contract. She said that this was on the basis that she felt that if the Claimants were made redundant during the period of the following fixed term Contract, that the Claimants would then be entitled to payment of compensation to the end of that Contract, together with a redundancy payment.

The Respondent's position that the letters of 2 December 2009 from CM issued without authority was never communicated to the Claimants until this hearing. It was accepted on behalf of the Respondent that these letters would have come as a shock to the Claimants.

The Tribunal are unanimously of the view that the Claimants were entitled to interpret the letter of 2 December 2009 as having serious consequences for the then present status of their employment.

An e-mail of the following day must clearly have alerted the Respondent to the fact that the Claimants had also taken this interpretation from the letter. There was evidence given of a telephone conversation taking place between the centre director and the Claimants on 11 December 2009. The content and tone of the discussion was disputed by both Claimant and Respondent. However, this telephone conversation was followed up by a letter of 16 December 2009 and the Tribunal was of the view that this was a very obvious opportunity for the Respondent to clear up any confusion that might have existed. Phone calls of 11 December 2009 and the letter of 16 December 2009 should have clarified that the Claimants were being offered the same amount of work as before. While the Respondent also accepted at the hearing that the Claimants were permanent employees, there is no evidence before the Tribunal that the Claimants were ever told this at the relevant time. The letters of 2 December were clear that fixed term Contracts were coming to an end and were not going to be renewed.

The letter of 16 December could clearly have specified that the Claimants terms and conditions were to continue as heretofore. The letter of 16 December merely added to the confusion and it was the Tribunal's view that the Claimants were entitled to interpret the situation as being one where their existing employment terms were likely to be substantially altered to their detriment.

On this basis the Tribunal are of the view that the Claimants were entitled, given the circumstances, to infer that a Redundancy situation had arisen. The Respondent never rescinded these letters and the claimants were entitled to think that their employment was coming to an end. Section 9 (1) (b) of the Redundancy Payments Acts 1967 to 2007 provides

For the purpose of this Part an employee shall, subject to this Part, be taken to be dismissed by his employer if but only if-

Where, under the contract under which the employee is employed by the employer the employee is employed for a fixed term or for a specified purpose (being a purpose of such a kind that the duration of the contract was limited but was, at the time of its making, incapable of precise ascertainment), that term expires or that purpose ceases without being renewed under the same or similar contract, or

The Tribunal is satisfied that the contracts expired without being renewed or a similar contract offered. In those circumstances the Tribunal finds that the claimants are entitled to lump sum payments under the Redundancy Payments Acts, 1967 to 2007 based on the criteria in the following schedule. The length of service of both claimants entitles them to four weeks' notice of termination whereas they only received two weeks' and two days' notice they are therefore further entitled to payments under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 as also set out in following schedule.

Appellant	Date of Birth	Employed From	Employed Until	Gross Weekly Pay	Notice given	Notice Due	Minimum Notice Award
1st Named	07/10/1968	30/09/2000	18/12/2009	€450-00	2 wks & 2 days	1 wk 3 days	€720-00
2nd Named	17/10/1969	01/03/2002	18/12/2009	€450-00	2 wks & 2 days	1 wk 3 days	€720-00

These awards are made subject to the appellants having been in insurable employment under the Social Welfare Acts during the relevant period

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)