

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:  
EMPLOYEE – *appellant*

CASE NO.  
RP1693/2010

against

EMPLOYER – *respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. N. O’Carroll – Kelly B.L.

Members: Mr. J. Reid  
Mr. J. Maher

heard this appeal at Dublin on 31<sup>st</sup> March 2011

Representation:

Appellant: Mr. Ray Ryan BL instructed by Mr. Keith Walsh, Solicitor, 8 St. Agnes Road,  
Crumlin Village, Dublin 12

Respondent: Ms. Dawn Noble, IBEC, Confederation House, 84/86 Lower Baggot Street,  
Dublin 2

The decision of the Tribunal was as follows:-

#### **Respondent’s Case**

The head of clinical microbiology gave evidence. He interviewed the appellant for a lectureship position. She was not successful. However he asked her to take up a post as a post doc researcher. The appellant moved from Scotland to take up the position. She started on 3<sup>rd</sup> October 2005. She worked on a grant application for three years funding for a project on antibiotic resistance. The grant application was successful and the appellant was employed for three years. She worked on the antibiotic resistance project under the supervision of the head of clinical microbiology. She had to submit interim reports on the project and a final report on the project was required at the end. It was assumed that she would write up her results for publication.

The appellant was also given the task of supervising a Ph.D. student. If a lectureship position had arisen she would have been a strong candidate. Due to the public service embargo such a position did not arise.

The Staff Office wrote to the witness and to the appellant about 5 weeks before her contract was to

end. He contacted the Staff Office to discuss how to continue funding the appellant's position. The work did not end with the grant. It was usual to extend contracts in his department. It was his intention to extend her contract on the basis of special purposes.

The head of clinical microbiology did not indicate to the appellant that he intended to extend her contract. He had no recollection of the appellant asking him if her contract would be extended. To his knowledge no formal offer of an extension of contract was made to the appellant. He felt that it would have been reasonable for the appellant to assume that her contract would be renewed.

He was not happy when the appellant informed him that she had accepted a position in Switzerland. She had not told him she was applying for the position. He accepted it as a done deal. He expected the appellant to publish her results and supervise the student. The appellant's contract was not renewed. By accepting the post she ended the connection.

The appellant was replaced by a post grad student; working to complete a PhD. She works in the same broad area but her particular interest is pathogenesis. The emphasis changed. Because she did not have a PhD she was paid at a lower rate than the appellant.

### **Appellant's Case**

The appellant gave evidence. She completed her doctoral studies in Edinburgh. Her first contract of employment with the respondent was for the development of molecular techniques. Her three-year contract was similar but the emphasis changed from techniques to mechanisms. She was researching antibiotic resistance.

The appellant was aware of the end date of her contract. The autumn before she made several grant applications under the head of microbiology's name. The applications were unsuccessful. In the spring of 09 she spoke to the head of clinical microbiology. They discussed why the grant applications were not successful. She asked him about an extension of her contract. He replied that he needed to check the department funds. He never came back to her.

The appellant's meetings with the head of clinical microbiology were infrequent. The project only required a yearly review. The work that she had been doing did not continue. Her replacement worked on pathogenesis; which is different from antibiotic resistance.

The appellant was never offered an extension of her contract and therefore was never in a position to reject such an offer. She would have expected the head of microbiology to advise her if he intended to extend her contract. If she had been offered an extended contract her response would have been –thank you very much.

She told the head of clinical biology she had been offered another position. She sought a counter offer from him. He wished her well and said good luck in Switzerland. She took this as meaning she would not be offered an extension of her contract.

### **Determination**

The Tribunal carefully considered the evidence adduced. Aware that her contract of employment was drawing to an end the appellant approached the head of clinical biology and asked would her contract be extended. In the absence of a positive response the appellant took the sensible course of sourcing and securing an alternative position. The Tribunal accepts the evidence of the head of clinical microbiology that he had intended to extend the appellant's contract. However, for reasons that remain unclear, he never offered her an extended contract.

The Tribunal finds that a redundancy situation did not exist in this case. The appellant's contract was drawing to an end and she left her employment to take up a new position. It is likely that had she not obtained an alternative position her contract would have extended and a redundancy situation would not have ensued. The appeal under the Redundancy Payments Acts, 1967 to 2007 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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