

## EMPLOYMENT APPEALS TRIBUNAL

CLAIMS OF:

CASE NO.

EMPLOYEE - **claimant**

UD269/2010

RP696/2010

MN250/2010

WT129/2010

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**  
**ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. M. Levey BL

Members: Mr. M. Noone  
Mr. J. Flannery

heard these claims at Dublin on 18 July 2011

Representation:

Claimant: Ms. Frances Meenan BL instructed by Ms. Gail O’Keeffe,  
O’Connor Solicitors, 8 Clare Street, Dublin 2

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

The determination of the Tribunal was as follows:

The claimant was a student on the two-year diploma course run by the respondent in its newly formed Centre for Deaf Studies (the centre). He successfully obtained a diploma in the teaching of Irish sign language (ISL). On completion of his diploma in 2004 the claimant was approached by the director of the centre and, with effect from 1 October 2004, accepted a temporary part-time position as an ISL tutor in the centre. This was on a fixed-term contract with a termination date of 31 August 2006. The claimant worked in the centre some six hours a week during term-time throughout this contract. Throughout the employment the claimant also received payment in respect of exam invigilation and correction.

With effect from 1 October 2006 the claimant was on a second fixed-term contract with a termination date of 30 September 2007. During this contract the claimant worked in the centre

some eighteen hours a week during term-time. The claimant was then placed on a third fixed-term contract from 1 October 2007 until 30 June 2008. During this contract the claimant worked in the centre some fifteen hours a week during Michaelmas and Trinity terms and twelve hours a week during Hilary term. From 1 October 2008 the claimant was awarded a contract of indefinite duration. The hours of work were the same as on the previous contract. The respondent's position is that at all times the claimant was on a 39-week year, effectively being laid off for the months of July to September inclusive. The claimant was one of ten employees in similar positions with the centre. They are described as adjunct lecturers in the documents produced by the respondent.

The centre was working towards the provision of a four-year degree programme and in July 2009 approval was granted for the centre to commence the degree programme from October 2009. This development had been discussed among the staff of the centre in the eighteen-month period prior to its approval. When the decision was taken to proceed with the degree programme there was no longer a requirement for the ten adjunct lecturers. There was a requirement to fill two new positions as half-time lecturers in Deaf Studies.

The director communicated with all ten adjunct lecturers on or around 3 July 2009 to inform them that their posts were no longer needed and that there were two new positions, which they were welcome to apply for. On 13 July 2009 the director wrote to the claimant in the following terms

*“As you are aware from our recent conversation the Centre for Deaf Studies is currently in the process of re-structuring its operation, due to the introduction of the Bachelor in Deaf Studies programme in the 2009-10 academic year. Part of this restructuring involves necessary changes to staffing levels and roles. As a result of these changes I regret to confirm that your contract of employment is not to be renewed in the coming academic year.*

*As also advised I am pleased to confirm that we are currently advertising two half time lecturer posts to support the Bachelor in Deaf Studies programme, to which you are welcome to apply.*

*The Staff Office will be in contact with you shortly to advise you of any entitlements you may have under the Redundancy Payment Act in this regard. I wish to express my thanks to you for your contribution to the department and offer my very best wishes for your future career.”*

The two positions were subsequently advertised and job and person specifications were issued. A short list of six applicants for the two positions was drawn up. Interviews were conducted on 18 August 2009 by a panel of five, including the director, with the Pro-Dean as chair and a Staff Office representative (RO) acting in the role of secretary. The interviews were marked over six categories with the mean score of each of the five panel members being awarded in each category. Arising from this process the two highest scoring applicants were successful. The claimant scored the lowest mark of the applicants. The claimant's position is that he was disadvantaged during the presentation by a failure of the power point projector and that this caused him to lose confidence for the remainder of his interview. RO wrote to the claimant on 19 August 2009 to advise him that his application had been unsuccessful. He then received a redundancy lump sum payment based on a termination date of 12 July 2009. When an error was subsequently discovered in relation to his rate of pay he received arrears in wages for the under payment. A cheque was also issued in respect of the effect this correction in wages had on the lump sum payment.

## Determination

There is no doubt that the introduction of the degree course led to an enhanced job and person specification for the new half-time lecturer roles when compared to those for the adjunct lecturer role. Section 7 (2) (e) of the Redundancy Payments Acts 1967 to 2007 provides

*“An employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to -.....*

*the fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should henceforward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained” .....*

The Tribunal is satisfied that there was a genuine redundancy situation, which led to the claimant’s position, along with those of his nine colleagues, being declared redundant.

The interview process was both structured and objective. The claimant complained of equipment failure during the presentation phase of his interview. Neither of the two witnesses on behalf of the respondent who were at the interview could recall this incident and the claimant accepts that he never raised it as an issue either at the time or during his correspondence with the respondent in the week following the failure of his application. The Tribunal is satisfied that the non-selection of the claimant for one of the two positions was not unfair. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail.

There was a dispute between the parties as to the weekly payment to be used when calculating the claimant’s lump sum payment under the Redundancy Payments Acts. The claimant maintained that his pay should be calculated on a 22-week year basis. The Tribunal is satisfied that the claimant was paid over a 39-week year and that his redundancy should be calculated on that basis. Whilst the respondent made a correction to the lump sum payment the Tribunal is not satisfied that the correct rate of pay was used for even the corrected payment. Using the P45 issued by the respondent the Tribunal is satisfied that the claimant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007 based on the following criteria

Date of Birth	23 January 1959
Employment commenced	1 October 2004
Employment ended	13 July 2009
Gross weekly pay	€429-67

There were periods of non-reckonable service, by reason of lay-off, from 13 July 2006 until 30 September 2006, from 1 July 2007 until 30 September 2007, from 1 July 2008 until 30 September 2008 and from 1 July 2009 until 13 July 2009. The Tribunal is cognisant that the claimant has already received the bulk of this award.

The Tribunal is not satisfied that the claimant was given notice at his meeting with the director on 3 July 2009. At this time the claimant was on seasonal lay-off and was told of the opportunity to apply for the two new positions. The letter of 13 July 2009 was effectively a termination letter and the Tribunal finds that to be the date on which the termination was effected, notwithstanding the subsequent interviews for the new posts. The Tribunal awards €859-34, being two weeks’ pay, under the Minimum Notice and Terms of Employment Acts, 1973 to 2005.

The Tribunal having already found that the claimant was paid on a 39-week year basis it follows that his entitlement to annual leave was met during the period between terms. Accordingly the claim under the Organisation of Working Time Act, 1997 must fail.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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