

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE

-claimant

CASE NO.
UD732/2010

against
EMPLOYER

-respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms B. Glynn

Members: Mr. P. Pierson
Ms H. Henry

heard this claim at Carrick-On-Shannon on 14th April 2011
and 20th July 2011

Representation:

Claimant: Callan Tansey, Solicitors, Crescent House, Boyle, Co. Roscommon

Respondent: Ms. Ger Moriarty, Local Government Management Services Board,
Local Government House, 35/39 Ushers Quay, Dublin 8

Preliminary Issue

At the outset, the Respondent objected to certain documents being put forward in evidence on behalf of the claimant, on the basis that the information was confidential to the parties involved. It was stated that the claimant was not an employee of the respondent at the time of the documents and that the information contained therein has no relevance to the case. The claimant's representative stated that it will be shown in evidence that the documents have in fact relevance to the claimant's case.

The Tribunal adjourned in order to decide on the preliminary issue at hand. On resumption, the Tribunal determined that the documents appear to deal with the matter in hand and therefore would be allowed into evidence.

On a second preliminary issue, the respondent stated that an unfair dismissal did not

occur as the contract was a specific purpose contract. The claimant's employment ended on the expiry of the specific purpose contract. The claimant's representative stated that the contract did not come to an end and that was the issue before the Tribunal. The Tribunal decided that the case should be heard bearing in mind the second preliminary issue.

Respondent's Case

The Senior Resident Engineer (FG) gave evidence that temporary contracts were put in place for Resident Engineers. His role was to monitor the project management and report to the relevant government department. The project involved 3 major contracts, one covering the pipelines to the north, one covering pipelines to the south, and a treatments contracts. Eighty per cent was funded by the Department and twenty per cent by the respondent. Reports are produced at different stages of the project. The claimant was a Senior Resident Engineer and is a Civil Engineer.

The claimant's contract related to the north county villages regarding the civil engineering works. The Resident Engineer covering the south of the county is still employed by the respondent. In September 2009 it was reported to the Department that the civil engineering aspect of the project would be complete by the end of the year. There was still 6-8 months of mechanical/electrical works to be completed. The claimant would have had very little work to do during this time. FG was satisfied that the claimant's work was complete at the end of 2009. The witness gave detailed evidence of the progress reports at the different locations.

Under cross-examination, FG confirmed that the project was probably 90% complete. When the claimant was let go the project was probably 50% complete. The remaining 50% related to mechanical engineering. The civil engineering of the north county was complete and 84% of payment due was made in December 2009. The outstanding monies of 16% related to works of a minor nature still outstanding. FG denied that only 63% of civil work was complete. The witness also denied that the Mechanical Engineer reported to the claimant.

On re-examination, FG confirmed that the job advertised was for a Civil Engineer. He said it would not have been reasonable to keep the claimant in employment while waiting for the mechanical engineering work to finish.

In reply to the Tribunal FG said it would be standard not to retain an Engineer, everybody would not be kept. The witness did not oversee the work as he was managing at a higher level. He went to site meetings and received progress reports and his evidence is based on these reports. There were two other permanent civil engineers.

The Senior Resident Engineer (FG) was recalled on the second day of hearing. The claimant was employed under a specified purpose contract. That specified purpose was *'to work on the (county) Towns & Villages Sewerage Schemes Project (North County) and will carry out such other duties as may be assigned from time to time.'* The

contract termination was on *'completion of the (county) Towns & Villages Sewerage Schemes Project (North County).'* The scheme was divided into the North and South County for logistical purposes. The claimant also did some work on the villages in the south.

FG gave evidence that by December 2009 the north county scheme was 77% complete overall, but discounting one of the village projects that had been shelved the scheme was 82% complete. The claimant was responsible for the civil works element of the projects. Village 1 was only 59% complete as the bad weather delayed progress. Village 2 was 90% complete only mechanical works remained, village 3 was 94% complete, village 5 was 70% complete and village 6 was at 4% completion as the project was temporarily shelved. With only 18% work remaining overall the scheme for the north of the county was substantially complete. The remaining civil works could not be completed until the mechanical and electrical works were finished. It was not reasonable to have the claimant *'hanging around'* for 10 months for the mechanical and electrical works to be concluded as the Senior Project Engineer could oversee the completion of the civil works. Certificates of completion were not issued for any of the north county sites.

The Chief Civil Engineer (BL) gave evidence of the Project organisation. To manage the Scheme there was a Senior Project Engineer employed, who in turn managed the two Resident Engineers; a civil engineer (claimant) and a mechanical engineer and two technicians. The five staff were all employed under temporary contracts. The civil engineering work on a project starts first then rests for the mechanical works, the civil work then resumes for the scheme completion. The Senior Project Engineer can manage the completion of the civil works; it would be a great *'luxury'* to be able to keep all the staff to completion. The Senior Project Engineer was on sick leave for six months at which time the civil engineer for the south of the county took over that role. BL was shocked by the contents of a letter received from the Project Consultants suggesting that by terminating the claimant's contract of employment the Project would be *'seriously short staffed particularly in the civil area.'* The consultants did not have to worry about the overall Project cost and this statement did not correlate to the level of work remaining according to the respondent's figures. A letter from the claimant's representative stated that the Project was only 50% complete but this figure included all the outstanding mechanical works as well as the civil works. The claimant was aware that he was responsible for the north of the county as it came up at every project meeting. The scheme was not separated into North and South at the tender stage. The claimant initially worked on the pipeline contract and did some other minor works outside of this Project.

The Senior Executive Officer in HR (ST) gave evidence that the claimant was on a specified purpose contract as, by their very nature they will come to an end. ST was informed that the project was coming to an end and that the claimant's contract of employment should be terminated. ST wrote to the claimant on the 26th of November 2009 informing him that his contract would be terminated as of the 1st of January 2010. On receipt of the claimant's representative's letter stating the project was only 50% complete ST was assured that the claimant's *'specified purpose'*

was complete and responded as such. Following advice the respondent offered the claimant redundancy payment as required but the claimant declined the payment. Completion is not defined in the contract but it is understood as the completion of the civil work, not the completion of the project.

Claimant's Case

The claimant was initially employed as a Residential Engineer from September 2006 to December 2007. He worked on a pipeline project for new and existing water treatment plants. The pipeline project was 95% complete when the position of Senior Residential Engineer was advertised. The claimant applied for this position and was successful and was positioned first on a panel for placement. The claimant commenced this new position on the 1st January 2008.

The claimant was informed by the Senior Project Engineer that he would be working on the 'towns and villages project' due to commence in March 2008. The claimant was doing various jobs before this project started. On receipt of his Contract of Employment on the 28th of January the claimant presumed that the reference to '*North (county)*' referred to the location of the office, not his geographical area of responsibility for the project. The claimant was looking after all the treatment plants for the first five months of the project until a second engineer was appointed and took over the South of the County. The second engineer was based in the south of the county so for mileage considerations he was given responsibility for the project in the South of the County. The progress meetings were always about all 11 'towns and villages'.

On the 9th of September 2009 the claimant was called to a meeting and informed that his contract of employment was terminated, as the pipeline project was complete. The claimant refuted that he worked on the 'pipeline' project and heard nothing further. On the 26th of November the claimant was informed that the reference to '*North County*' on his contract meant he was employed on the pipeline project. The claimant was informed that his contract was the weakest so it was being terminated for financial reasons.

As of the claimant's leaving date no completion certificates had been issued and the sites were not ready for the snagging to be done. At 96%-98% the snag list would be done and only then a completion certificate issued. The works were 59% complete when the claimant left employment. The claimant gave detailed evidence of all the remaining work to be completed for each village. There is always mechanical work and civil work going on simultaneously on a site.

The Engineer for the South County gave evidence that he was asked to take over four of the villages in the project in order to reduce the claimant's mileage. This witness was informed he would have to take on the claimant's responsibilities when he ceased employment. The witness had to assume total responsibility for the '*Towns and Villages*' project when the Senior Project Engineer went on sick leave. The project was

60%-65% complete when the claimant ceased employment and the Senior Project Engineer went on sick leave. As of the hearing date 7 of the 11 sites have been issued taking overcertificates. At the interview stage the witness was informed that there was two positions available; one for the 'towns and villages' (claimant) and the other for a specific site in the south of the county (witness).

Determination

In determining the matter, the Tribunal have given great weight to the contents of both contracts of the claimant, as these were drafted by the respondent, and set out the terms and conditions of the claimant's employment.

The First Contract is dated 4th September 2006. The position of the claimant as stated therein is Resident Engineer. The purpose for which he was employed is stated as "...to work on the (county) Towns and Villages Schemes Project" The Contract further states that the employment will terminate on "...completion of the (county) Towns and Villages Schemes Project...". No definition is given to the term "completion" in the contract. Neither does it provide for unforeseen contingencies such as inability to complete the work due to circumstances beyond the respondent's control.

The Second Contract of the claimant is dated 23rd May 2008. The position of the claimant as stated therein is Senior Resident Engineer. The purpose for which he was employed is stated as "...to work on the (county) Towns and Villages Sewage Scheme Project and the (south county town) Sewerage Scheme...." The Contract further states that the claimant's employment will continue until the completion of the (county) Towns and Villages Sewerage Scheme Project and the (south county town) Sewerage Scheme Project, which expected date the contract states as being 31st May 2009. Again, no definition is given to the term "completion" in the contract, though an expected date is given, and, again, it does not provide for unforeseen contingencies, which might occur, which would be beyond the respondent's control.

On the 26th November 2009 the claimant received a letter from the respondent informing him that the purpose for which he was employed was completed, as a consequence of which his employment with them would cease on the 1st January 2010. This letter is at odds with the contents of a letter from the respondent's Consulting Engineers to the respondent on the 14th September 2009, after they had been informed at a project meeting on the 10th September 2009 that two staff members, one of whom was the claimant, were having their contracts terminated. This letter expresses concern that the termination of the claimant's contract (and another employee) would leave the project short staffed. While the respondent stated in evidence that it was the norm to obtain such a letter from Consulting Engineers, the Tribunal does not accept this. The Tribunal also noted that the respondent did not reply to this letter.

The Tribunal are satisfied from the evidence given by both the witnesses for the

respondent and the claimant that the work was not complete on this project on the date notice was given to the claimant. Indeed, the spreadsheet produced by one of the witnesses for the respondent in respect of Payment Certificates issued showed that while some of the works were substantially complete, others were not. Evidence was adduced that while the work in some areas was greatly reduced, it did not stop. It is accepted that this was due to matters outside the respondent's control. However, such contingencies were not covered in the respondent's contract with the Claimant.

In the course of the evidence, great emphasis was placed on the fact that the work was split up between the north and the south of the towns in the Scheme and that the claimant primarily worked in the north. Evidence was given that there were three contracts in place with different contractors, one covering the pipelines to the north, one covering the pipelines to the south, and a Treatments Contract. While the Tribunal do not dispute this, they place no significance on this information, as evidence was given at the hearing that the map drawn up, showing such division, was for the purposes of the hearing only. It is also clear from the evidence adduced that the breaking up of the project between the north and the south with regard to the engineers, was for logistical reasons only. There is also the fact that the first contract makes no reference to such division, and while the second contract refers to the pipeline contract in the north, this is ancillary to the 'Position', as set out in the contract. The Tribunal are satisfied from the evidence and documentation produced at hearing that the claimant's work was not solely confined to the north.

Having considered all of the evidence the Tribunal finds that the claimant was unfairly dismissed therefore the claim under the Unfair Dismissals Acts, 1977 to 2007 succeeds. The Tribunal find that compensation is the most appropriate remedy in this case and find that the sum of €17,000.00 is just and equitable in all the circumstances.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)