EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:	**CASE NO.**
EMPLOYEE - Appellant	UD763/10

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

- EMPLOYER
- Respondent

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms P. McGrath BL

Members: Mr C. Lucey
Ms M. Maher

heard this appeal at Dublin on 26th July 2011.

Representation:

Appellant : Ms. Chris Rowland, SIPTU, Education Branch, Liberty Hall, Dublin 1

Respondent: In person

The determination of the Tribunal was as follows:-

This case came before the Tribunal where the appellant was appealing the recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007 ref. r-081955-09/TB.

Respondent's Case:

The respondent is a vocational education committee based in Co. Dublin. The allocation of teacher posts is based on a ratio of teachers to students and is approved by the Department of Education and Skills on an annual basis. Each school is required to organise its curriculum, teaching time-table and subject options having regard to pupils' needs within the limits of its approved teacher allocation.

The appellant was appointed as a fixed term pro-rata teacher in Computers with A Plus computer language to college G in Walkinstown for the 2006/2007 school year. He was reappointed as a pro

rata teacher in business under a fixed term contract for the school year 2007/2008 and again for the school year 2008/2009. The appellant did not sign his 2008/2009 contract and the Committee wrote to him requesting that he sign and return it.

In the Budget 2009 the Government through the Department of Finance announced a reduction of one point in the pupil teacher ratio for the academic year 2009/2010. The implementation of this change in policy resulted in an overall decrease in teacher numbers and consequently a number of permanent and indefinite duration teachers were redeployed within the Co. Dublin VEC scheme. Twenty-four teachers in the scheme were let go, all of who were on fixed term contracts. There is a transmutation date after four years service and a teacher automatically acquires a contract of indefinite duration. This is a permanent position.

The practice, which prevails, is the normal practice. In February of each year principals advise HR as to their requirements for the next year. When the Chief Executive Officer gets teacher allocations the principal of each school interacts with individual teachers. As needs of the scheme change teachers can be redeployed. Applications by teachers to redeploy are made in March of each year. Redeployment is also done on an involuntary basis, which is driven by the curricular needs of each school.

Following the Croke Park Agreement teachers with contracts of indefinite duration get redeployed in the first instance. The teachers union has accepted procedures in place. Curricular needs of each school are reviewed annually. Before the end of the academic year, the principal of college G (JJ) as well as other school principals, sits down with each teacher on a one to one basis and discusses the school's curricular needs for the following year. The respondent contended that JJ sat down with the appellant and informed him that his contract was not being renewed.

A teacher in school K returned from secondment. Teacher B, an indefinite duration pro rata teacher who had worked in school K, with a contract value of 15 hrs. and 10 mins was redeployed to college G. She had six years experience. She had a BSc in computer studies and had business qualifications.

By letter dated 15th June 2009 the appellant was informed that his contract of employment would terminate on 31st August 2009. This was due to the decrease in teacher allocations and the redeployment of staff and the respondent was not in a position to offer or renew his contract for the 2009/2010 school year.

The appellant had two fixed terms of employment and three years continuous service and so was entitled to a redundancy payment. His redundancy cheque was ready for collection from Monday 26th July 2010. He never collected that cheque.

On 17th January 2011 the appellant rang the respondent and asked that his cheque be posted out to him. As there was a requirement for him to sign an RP50, an appointment was made for him to collect the cheque on 21st January 2010. However, he subsequently telephoned the respondent the following day and told the respondent that he was advised not to accept the cheque or to sign the necessary form.

Appellant's Case:

The appellant holds a qualification in business studies. He commenced employment with the respondent in September 2006. He worked fourteen hours and forty minutes per week. When he was interviewed for his position he told the principal that his qualification was in business studies. His qualifications were recognised by the teaching council.

The Principal (JJ) normally held end of year staff meetings at the end of April/beginning of May to update teachers on the following academic year.

The appellant contended that JJ never spoke to him during the year 2009 or at staff meetings about redeployment or redundancies. His union representative at the time was not informed that the HR department were implementing redundancies. His representative had even assured him that he would receive more teaching hours. The appellant was thus very surprised to receive a letter informing him that he was being redundant. He immediately telephoned JJ to discuss the matter, but JJ did not want to talk to him as he was going on holidays the next day. That was the last time he spoke to JJ.

A new school was built close to where the appellant lived. He applied for a position there as he thought there would be a permanent position. He received notification on 23 June 2009 that no suitable vacancy existed for the academic year 2009/2010. This letter was received some eight days after he was informed that he was being redundant. None of these positions were advertised internally or externally. He was never given an opportunity to redeploy or cover those on maternity leave.

The appellant contended that courses in business studies were still being taught in college G. A teacher who held a qualification in computing and who was not qualified to teach business studies replaced him. The appellant also contended that the courses did not change and that a fixed term contract was renewable, some teachers were not qualified in subjects they taught and were not made redundant. Teachers with fewer qualifications and less service were not let go. The courses he taught were still in place in the college.

Since the appellant was made redundant, he secured a teaching position from 1st September 2009 to 31st August 2010. He then applied for other positions but was unsuccessful and is in receipt of social welfare payments, which will expire on 31st August 2011.

Determination:

The Tribunal has carefully considered the evidence adduced. The appellant had been employed on a series of lawful twelve-month fixed term contracts. He worked in a Community College in Walkinstown teaching Business Studies with IT skills.

It is common case that the budgetary implications of 2009 meant that all educational institutions needed to look to their numbers to increase the pupil teacher ratio for the academic year of 2009 and 2010.

The inevitable outcome to this strategy would be to leave teaching staff surplus to requirement.

Witnesses acting on behalf of the VEC in the Dublin area indicated that over time they put in place

the curriculum requirements and qualifications needed to best ensure that all the subjects being taken would be covered by appropriate teaching staff such that also allowed the VEC reduce its overall numbers by 24 spread out across 26 educational institutions.

The VEC indicated that it had a last in first out policy in operation and that persons having contracts of indefinite duration would therefore be retained over and above persons that still operated on fixed term contracts.

The evidence was that persons with four years continuous fixed term contracts would automatically transmute into employees of contracts of indefinite duration.

The appellant had not yet achieved the status of having a contract of indefinite duration. In total, the VEC opted to not renew the fixed term contract of up to 24 employees of which the claimant was one.

In circumstances where the claimant had three years service the parties argued that the appellant is entitled to a redundancy payment in accordance with the normal calculations of reckonable service which in these circumstances amount to a period of three years reckonable service.

In relation to the unfair dismissal legislation, the claimant states that he was unfairly selected for redundancy. However, the respondent made the case that against a background of redeployment and restructuring which had to reduce numbers, it was enabled to go with the option of simply not renewing a fixed term contract that was coming to its point of expiration in any event.

In considering all the facts the Tribunal finds that, in a post budgetary situation, the VEC was left with the unenviable task of having to implement a programme of redundancy. In carrying out this task the Tribunal recognises that the VEC failed to keep the workforce fully informed of the changes the VEC would have to make across the board.

In particular the Tribunal accepts that the principal in college G did not sit down with the appellant on a one to one basis which had been contended by witnesses for and on behalf of the respondent. It is noted that the principal did not give his own evidence in this regard.

However, the Tribunal does not accept that the appellant was not aware of the likelihood of changes being implemented across the board as these changes were in the public domain as a direct result of executive decisions taken at a governmental level. It is not possible that the appellant did not know that his position was in jeopardy.

The Tribunal does not therefore accept that there was an unfair selection for redundancy as the appellant was chosen on the same basis as another 23 people who had been on the same type contracts as the appellant. The respondent had set out its criteria which were reasonable in all the circumstances and whilst it is unfortunate that the appellant did not satisfy the criteria nor did the other 23 candidates selected. Whilst the Tribunal might be critical of the lack of dialogue with the appellant this failure is not sufficient to warrant a reversal of the decision.

The Tribunal upholds the Recommendation of the Rights Commissioner under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)