

## EMPLOYMENT APPEALS TRIBUNAL

**CLAIM(S) OF:**

**CASE NO.**

EMPLOYEE  
- *claimant*

UD464/2010

against

EMPLOYER - *respondent*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. Gilvarry

Members: Mr. D. Morrison  
Ms. R. Kerrigan

heard this claim at Letterkenny on 25th August 2011

### **Representation:**

Claimant: In person

Respondent: Ms Cathy Maguire BL instructed by Ms. Pamela Benson, Chief State Solicitor,  
Chief State Solicitor's Office, Osmond House, Little Ship Street, Dublin 8

The determination of the Tribunal was as follows:

The claimant was employed on a temporary basis as a clerical officer within a Garda station. It is the claimants case that after a series of temporary contracts she was unfairly dismissed by the respondent. It is the respondent's case that the claimant's position was terminated when her last fixed term contract expired and that the claimant was excluded from bringing a claim under section

2 (2) (b) of the Unfair Dismissals Acts 1977 to 2007, (hereafter referred to as “The Unfair Dismissals Acts”).

The claimant was employed on a temporary basis from the 3<sup>rd</sup> March 2006 until 7<sup>th</sup> August 2009. Over this period eleven fixed term contracts were issued to the claimant and all but one had an exclusion clause in respect of the Unfair Dismissals Acts viz “The Unfair Dismissals Acts 1977 to 1993, shall not apply to the termination of your employment by reason only of the expiry of this fixed term contract without it being renewed”.

### **Respondent’s Case**

An assistant principal officer of HR of the parent department gave direct sworn evidence on behalf of the respondent. She explained the practice of recruitment for civil grades within An Garda Síochána and the wider recruitment of public appointments. The Public Appointments Service is the centralised provider of recruitment for the Civil Service and they run competitions at various stages to establish panels for permanent positions within the Civil Service. It is an open and transparent process. Temporary positions within the Civil Service can be recruited locally and the parent department would go through the local FAS office and create a panel for temporary staff for short-term contracts. This is how the claimant was recruited.

Each area has a number of permanent posts assigned to it and when these become vacant they are filled from the PAS panels or in this economic climate other staff can subsume them. A fixed term contract is not a means of filling an existing vacancy but rather to aid them in a specific task. A station may apply to obtain staff on a fixed term basis for a block of work that needs to be done.

A moratorium on recruitment of staff came in to being in March 2009. Since then they are not permitted to recruit new staff, and this decision also applied to temporary appointments on a fixed term basis and to the renewal of such contracts. Currently to renew a fixed term basis contract you have to make a case to the Department of Finance, it would have to be a strong business case in exceptional circumstances for specific grades, general service grades are not included in this. This moratorium on recruitment affects the permanent posts that now become vacant.

Under cross-examination it was her understanding that previously persons had been made permanent after four years of fixed term contracts but not recall a specific case. However she was not aware of any permanent position within the public service since the moratorium.

The executive officer for the county division of An Garda Síochána gave evidence on behalf of the respondent. He is responsible for all clerical staff and has been in this position since March 2008. He supervised the claimant and was very happy with her work. After this date he was responsible for the renewal of the claimant’s temporary contracts. He sought the extension of the claimant’s contract in May 2008 on the basis of attendance shortfall and was successful in getting it extended until 1<sup>st</sup> August 2008. At this time they had staff members on maternity leave and term time vacancies and were down on their normal compliment of staff. There was a permanent need for the post the claimant was filling. The claimant’s contract was renewed again in August 2008 until February 2009 as a clerical officer from another division was out on maternity leave, one clerical officer from his division went to this division to cover the maternity leave and the claimant continued in her role.

The claimant’s last contract issued to her on the 6<sup>th</sup> February 2009 terminating on the 7<sup>th</sup> August

2009. There were confidential files from the CSSO being sent up to their division and needed to be dealt with and as the claimant had been there a while she was capable of fulfilling this task. When this contract was due to expire he went to some lengths to get it extended with the support of the Chief Superintendent. A series of email were introduced in to evidence showing his attempts to get the claimant's contract extended but this further extension was not sanctioned.

Under cross-examination he explained that the claimant had worked in the Chief Superintendent's office from July 2006 to her termination and that there was a need for a permanent post in this office to be filled. However as regards the numbers in the division there was no permanent post. The claimant was the only civilian in this office and Gardai manned the other posts.

### **Claimant's Case.**

The claimant gave direct sworn evidence. She initially commenced work in the station in January 2006 and covered for maternity leave until 12<sup>th</sup> May 2006. She was approached and asked to come back and commenced again on the 31<sup>st</sup> July 2006 and this continued to work until the 7<sup>th</sup> August 2009. On her return in July 2006 she worked in the Chief Superintendent's office until her contract was terminated in August 2009. The purposes set out in her series of fixed term contracts did not apply to her as she was always in the Chief Superintendent's office.

She referred to a letter dated 11<sup>th</sup> February 2009 from the Assistant Commissioner in which it states that "this is the final extension that can be considered, since any further extension would entitle *claimant* to a Contract of Indefinite Duration". This letter means that the decision to terminate her employment was made before the moratorium was introduced in March 2009 and she referred the Tribunal to section 13 of the Protection of Employees (Fixed Term Work) Act 2003. She was not dismissed for reasons of her work quality. It was her belief that there was a vacancy in the Chief Superintendent's office and the Chief Superintendent specifically wanted her to be kept on. She gave evidence of loss.

Under cross-examination she confirmed that she was familiar with the process of recruiting permanent posts to the Civil Service and had in fact applied and obtained a place on the panel. For the position she held in the station she had applied through FAS and knew it was going to be a local job. Initially she had no expectations of being made permanent it was after she had remained there for three years. She accepted that she knew all along that her contracts were temporary and her employment could cease on the expiration of these. She knew if her contracts did not exceed four years she would not receive a permanent post. She was aware of the moratorium however in exceptional circumstances staff could be kept on. While her position would not be classified as specialist it was quite unique as she was based in the Chief Superintendents office. She was aware of the efforts made on her behalf to get her contract extended. She was doing this job for three years why should she not have been made permanent.

## **Determination**

The Tribunal carefully considered the evidence given and the submissions made by the parties.

In this case the Tribunal were impressed by the evidence given by the claimant, and had every sympathy for her plight. The claimant was obviously a valued member of the Chief Superintendent's team, and only for the meltdown in public finances, would more than likely still be working in the station.

The Tribunal however is a creature of statute and has no Jurisdiction save to apply the Legislation as set out in the relevant statutes. The contracts entered into were clearly for fixed terms/purposes and the saving clause relating to non-application of the Unfair Dismissals Acts was included. We find that the series of contracts were not entered into for the purpose of the avoidance of liability under the Unfair Dismissals Acts.

The respondent fulfilled the legal requirements in the Legislation and was entitled to dismiss the claimant on the expiry of her fixed term contract, and such a dismissal solely by reason of such expiry was not unfair.

The Tribunal therefore dismisses the claimant's claim.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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