

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:
EMPLOYEE
Against

CASE NO.
UD2179/2010

EMPLOYER
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 Sligo on 22nd February 2012

Representation:

Claimant: Callan Tansey, Solicitors, Law Chambers, 3 Wine Street, Sligo

Respondent: Mr Tiernan Doherty, IBEC, Gardiner House, Bank Place,
Charlotte Quay, Limerick

The determination of the Tribunal was as follows:-

Background:

The claimant began working in August 2009 on a fixed purpose contract to replace an employee on sick leave. The employee sent a final certificate to the respondent advising of fitness to return to work. It is the practice of the respondent organisation that all annual leave be taken before the date of return. The claimant was advised of the return and the fixed purpose contract came to an end. After the period of annual leave the employee did not return to work and went on a further period of sick leave.

Respondent's case:

PE HR officer with the respondent organisation stated that the claimant had been on the books as a casual employee before this position became available. Because a full time employee MR was on long term sick leave a specific purpose contract was offered to the claimant, which she accepted and signed. The respondent organisation received notification by way of a final certificate that MR was fit to resume work as and from 16th March 2010. MR was sent to an occupational therapist by the respondent and was deemed fit to return on a phased basis. A period of accrued annual leave was then taken bringing the due date of return to the 12th April 2010. The claimant's specific purpose contract was terminated on the 9th April. MR did not return to work and a person who was

already in the employ of the organisation was redeployed to the position. The claimant could not be taken back because of the moratorium on recruitment.

Under cross examination PE stated that the claimant was given her notice in good faith. If MR had not given her indication of return to work the claimant may still be in the position today.

Claimant's case:

The claimant BH stated that she received a letter informing her that her contract was terminated as and from 9th April. She went to PE's office on the 9th and thanked him for the work, he gave her a P45. She had heard a rumour that MR was not going to return but PE told her that "as and of today she has indicated that she is coming back".

When BH discovered that MR had not returned to work she telephoned PE who said she had come back for a day, he then got her off the phone as soon as he could. She felt that she was replaced unfairly. Other people who started after her have now permanent positions.

Under cross examination BH said she was aware that her contract was to replace MR while she was on sick leave, it was MR's post and she was aware that on her return she would be dismissed.

Determination:

The Tribunal carefully considered the evidence adduced at the hearing. The net issue relates to the claimants specific purpose contract. The respondent stated that the specific purpose came to an end when MR notified them that she was fit to return to work and intended to do so. They stated that it was the employer policy to require the lady returning from sick leave to use up all accrued leave prior to her return. This period allowed them to let the claimant have a period of notice to adjust to the termination of the contract.

The Tribunal took into account the fact that it was clear that MR had volunteered to return to work and furnished a medical certificate of her fitness to do so and that the respondents had verified the fitness to return with an independent occupational therapist.

The medical certification showed MR fit to return as and from 16th March and as and of that date the specific purpose contract determined and the respondents were entitled to dismiss the claimant. The fact that MR did not return to work after her period of annual leave was unfortunate but the specific contract was determined at that stage.

S.2(2)(b) of the 1977 Act provides that *the [Unfair Dismissals] Act shall not apply in relation to dismissal, where the employment was under a contract of employment.....for a specified purpose (being a purpose of such a kind that the duration of the contract was limited but was, at the time of its making, incapable of precise ascertainment) and the dismissal consisted only of.....the cesser of the purpose and the contract is in writing, was signed by or on behalf of the employer and by the employee and provides that the Unfair Dismissals Act shall not apply to a dismissal consisting only of the expiry or cesser aforesaid.*"

The claimants claim is therefore dismissed.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

