

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –**Claimant**

UD1522/2010

MN1453/2010

against

EMPLOYER- **Respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T.L. Gill
Mr T. Brady

heard these claims at Tullamore on 14 February 2012

Representation:

Claimant:

Mr Peadar O'Maolain BL instructed by
Mr Nevin O'Shaughnessy, O'Shaughnessy Solicitors,
1st Floor, No 1 Fr. McWey Street, Edenderry, Co. Offaly

Respondent:

Mr Kevin Langford, Arthur Cox Solicitors,
Earlsfort Centre, Earlsfort Terrace, Dublin 2

The determination of the Tribunal was as follows:

Preliminary Issue

The claimant was employed as a respite worker on a community employment programme on a fixed-term contract from 11 August 2008 until 9 February 2009. The claimant was issued with a second fixed-term contract commencing on 9 February 2009 and ending on 5 February 2010. This contract states "the Unfair Dismissals Acts 1977 to 2007 shall not apply to the termination of your employment by reason only of the expiry of this fixed-term contract without it being renewed."

During the term of this second contract the claimant became dissatisfied about certain aspects of her employment. Her contract was not renewed when its term expired on 5 February 2010. The respondent's position was that the Tribunal has no jurisdiction to hear her claim as the claimant was dismissed following the expiry of a fixed-term contract as set out in Section 2 (2) b of the Unfair Dismissals Acts. The claimant's position was that the termination of the employment was not only

by reason of the expiry of the fixed-term contract but was related to her treatment by a member of staff to whom she reported and was then subjected to bullying and harassment by administrative staff.

Determination:

Section 2 (2) b of the Unfair Dismissals Acts provides

“This Act shall not apply in relation to dismissal where the employment was under a contract of employment for a fixed term or 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 expiry of the term of without its being renewed under the said contract or 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 this Act shall not apply to a dismissal consisting only of the expiry of the expiry or cesser aforesaid.”

The claimant was in receipt of a fixed-term contract which both she and a representative of the respondent had signed. The contract contained a clause which provided that the Act did not apply. The claimant’s employment was terminated at the expiry of the contract and the dismissal consisted only of the expiry of the contract. The Tribunal is satisfied that the conditions set out in Section 2(2) b are met and there is no jurisdiction to hear the claim under the Unfair Dismissals Acts, 1977 to 2007.

The evidence having shown that the claimant received in excess of the statutory entitlement of notice of the non-renewal of her contract the claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 must fail.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)