

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:  
EMPLOYEE  
- *Appellant*

CASE NO.

RP2599/2010

Against

EMPLOYER  
- *First Respondent*

EMPLOYER  
- *Second Respondent*

under

### REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. Hurley  
Members: Mr. W. O'Carroll  
Ms H. Murphy

heard this appeal at Galway on 13 January 2012

#### **Representation:**

Appellant(s) : Mr Brendan Flanagan, Higgins Chambers & Flanagan Solicitors,  
Headford, Co Galway

Respondent(s) : Mr. Liam Riordan, Mason Hayes & Curran Solicitors, South Bank House,  
Barrow Street, Dublin 4

The decision of the Tribunal was as follows:-

#### **Preliminary Issue:**

The details provided on the TIA form in respect of the date of cessation of employment was changed to the 31 August 2009. This was agreed by all parties. The appeal therefore to the Tribunal under the Redundancy Payments Acts 1967 to 2007 was made within the 52 week period.

A further matter regarding the identity of the true employer in this case was raised. The second named respondent was not represented, however two officials were in attendance.

#### **Appellant's Case**

The appellant gave evidence of commencing employment in August 2004. She was appointed by the first named respondent as a Special Needs Assistant (SNA) in a job sharing capacity. She

had an excellent working relationship with the staff and principal. She was paid fortnightly by the second named respondent.

The appellant was asked by the first named respondent to work full time as the other (SNA) was approved for a career break. In September 2005 she commenced work on a full time basis and a signed contract of employment was submitted in evidence dated 28 September 2005 which included a reference to the post being full time. The representative on behalf of the appellant submitted the appellant's contract of employment making reference in particular to Section 4.1 which states inter alia "your employment may be terminated by way of redundancy".

In May 2009 she received a letter from the first named respondent advising her that BM was now returning from her career break and would be resuming her SNA post. Following the return of (BM) the appellant's employment was terminated.

### **Determination**

Having considered the evidence adduced, the Tribunal is satisfied that the appellant was dismissed by way of redundancy. In making this determination the Tribunal considered the relevant legislation and in particular Section 9 (1)(b) of the Redundancy Act 1967 as amended by Section 6 (b) of the Redundancy Payments Act 2003.

For the purposes of this Part an employee shall, subject to this Part, be taken to be dismissed by his employer if but only if

(b) where under the contract under which he is employed by the employer he is employed for a fixed term, that term expires without being renewed under the same or a similar contract, or

Section 9(1) of the Principal Act is amended by substituting the following of paragraph (b)

"(b) where, under the contract under which he is employed by the employer the employee is employed 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), that term expires or that purpose ceases without being renewed under the same or a similar contract"

The Tribunal finds that the appellant was employed for a specified purpose to replace or "cover" for another employee who may or may not return to work and when this other employee did return to work the claimant's contract was terminated and she was dismissed for the purposes of the Redundancy Payments Acts.

The Tribunal is satisfied that a contract of employment existed between the Board of Management of the school and the appellant and finds that the true employer in this case was the first named respondent.

The Tribunal considered all the evidence adduced, including the documentary evidence, and is particularly influenced by the letter from the first named respondent to the appellant dated 27

May 2009 where reference is made to the nature and purpose of the appellant's contract of employment such as to bring it within the ambit of Section 9 (1) b of the Redundancy Payments Act 1967 as amended by Section 6 (b) of the Redundancy Payments Act 2003.

Accordingly the Tribunal awards the appellant a redundancy lump sum under the Redundancy Payments Act 1967 to 2007 based on the following criteria.

Date of Birth:	23 February 1958
Date of Commencement:	13 September 2004
Date of Termination:	31 August 2009
Gross Pay:	€577.54

Sealed with the Seal of

Employment Appeals Tribunal

This \_\_\_\_\_

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