

EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

EMPLOYEE - *Claimant*

UD2269/2010
RP3063/2010

Against

EMPLOYER - *Respondent*

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL
Members: Mr M. Carr
Mr G. Whyte

heard this claim at Dublin on 28th March 2012 and 18th May 2012

Representation:

Claimant(s) : Mr Mark McParland, Mark McParland, Solicitors, No 6 Argyle Square,
Morehampton Road, Donnybrook, Dublin 4

Respondent(s) : Ms. Fiona Higgins, IBEC, Confederation House,
84-86 Lower Baggot Street, Dublin 2

The determination of the Tribunal was as follows:-

MB the CEO of the respondent who gave evidence of holding the position of HR Director at the time the claimant was in employment and when employment was terminated. She told the Tribunal that in 2010 she had responsibility for ensuring the respondent complied with the employment control framework (ECF). Strict budgets and staff ceilings were imposed on the respondent. The claimant was employed part time from June 2006 and worked in the area of health care records. Her duties included filing, answering telephones and general administration. Her employment continued on fixed term contracts until the 18 April 2010 when MB met with her and wished her well. The claimant never expressed any grievance at that time as she knew she was on her last fixed contract of employment.

At the time there were cuts in all areas of the hospital and although the claimant applied for a job she was unsuccessful at interview.

MB could not confirm the date of the first contract of employment which was dated the 21

November 2006. She confirmed all fixed contract employees are paid fortnightly however she stated it was possible if an employee had a contract for a number of months they could be paid monthly. She agreed a salary increase was given to the claimant in November 2009 but disagreed that this could be viewed as an indication of continued employment. MB said that because another employee was returning from maternity leave she had to let the claimant go at that time. The claimant had four contracts over a short period with references to specific purposes. MB said she as HR director had written the contracts which were generic contracts issued to all temporary employees. It was her evidence that the claimant was issued fixed term contracts as she was providing cover in different areas. She had moved from health care records to more defined roles including dealing with consultant's clinics. The Tribunal asked why a three week period was covered by two contracts which she was unable to explain.

SN gave evidence of her role in the HR department having been employed there since January 2007 in charge of recruitment. She had interacted with the claimant when the claimant had applied and interviewed for a job. The post was advertised by the HR department following the resignation of an employee on career break and was a permanent post at grade three level. The claimant applied and was unsuccessful. The claimant was disappointed when she told her that she hadn't given examples to support her competencies at the interview.

The Tribunal asked SN to explain if the claimant was already carrying out the duties successfully how could she have not succeeded at the interview. SN said that the other applicants were also experienced in the role and were also on fixed term contracts. She agreed no matrix of competencies was provided to the applicants. Although the claimant had a good record an interview process for selection was the fairest way to recruit for the permanent post. SN said she had no role as regards contracts of employment and was only responsible for recruitment at that time.

TK told the Tribunal she had responsibility for employment contracts and industrial relations issues at the time the claimant was employed by the respondent. She confirmed the claimant was employed initially in porter services and later assigned clerical duties to cover sick leave and maternity leave in the health care records division. Having commenced college the claimant worked one day per week which fitted in with her college course. In early 2007 she commenced a full time temporary position to cover for EB a grade three clerical officer in the medical records division who was moved to another area on temporary promotion. TK met with the claimant on the 15 April 2009 regarding a further one year contract. She informed the claimant at that meeting that this contract was her final contract and followed up on the meeting with an email to the claimant's line manager. In regard to the claimant being paid monthly she explained any employee with a definite contract of employment is paid monthly as opposed to fortnightly. In reference to the letter dated October 2009 regarding incremental credits TK told the Tribunal that this letter is a standard letter issued to employees advising them of which point on the incremental scale they have reached. All employees who work over eight hours per week are automatically subscribed to the superannuation scheme. TK denied that any of the above suggested the claimant was in permanent employment and that there was no reason for the claimant to interpret her employment would continue. After the claimant left EB returned to the post and no new appointments were made.

She was unable to offer any explanation as to why there was no signed copy of one contract and she accepted that nine out of the ten contracts the claimant had with the respondent were all signed by the claimant. She said the ECF had no bearing on the claimant's contract and the reason her contract ended was due to the return of the substantive post holder. She was sure the

claimant was aware that she was covering for another employee.

The claimant SC initially worked as a volunteer with the respondent during school holiday periods and in June 2006 was asked by the head porter to work in porter services for two weeks. Following on from that she was offered a job in the health records section and her first contract of employment was dated 21 November 2006. Once commencing college she worked for one day per week for a period. In April 2007 she commenced full time employment. No discussion or meeting took place with the HR department and she never met with TK at any time during the course of her employment. She interviewed for a position in order to gain interview experience and to improve and develop her skills should she be required to interview for promotion in the future. She saw her future working for the respondent. SC explained that she had always signed her contracts and when she was switched to monthly pay and following receipt of the letter dated the 15 October 2009 regarding her point on the salary scale she believed she was in a permanent position of employment. She added all permanent employees were paid monthly. The claimant was allowed to buy back years for pension purposes which further lead her to believe she was a permanent employee.

The claimant was never told she was replacing another employee during the course of her employment

On the 15 April 2010 MB requested to meet with her and at that meeting she was informed that due to recessionary times she would have to let her go. She was told she would finish the next day and there was no reference to her contract during that meeting. She told the Tribunal of her disappointment and upset having worked for the respondent for three years and ten months. She had not appealed the decision as she had been shocked and initially found the dismissal a lot to take in.

Determination

The Tribunal has carefully considered the evidence adduced by both parties and it is clear that there is a question mark as to whether the claimant received her contract dated the 17 April 2009. The respondent states that they furnished her with the contract however they were unable to produce evidence of that fact. The claimant stated she did not receive the contract. Based on the fact that the contract is the only one of her contracts that is not signed by her, the Tribunal prefer the claimant's evidence in this regard.

The claimant continued to work with the respondent until the 15 April 2010. As she had not received a contract on the 17 April 2009 her employment status became one of indefinite duration.

She was informed on the 15 April 2010, without notice, that her employment would cease on the 16 April 2010. She was informed it was due to the recession and no other explanation was forthcoming.

The claimant stated in evidence that she was incapable of returning to work due to an injury sustained during the course of her employment with the respondent. On that basis re-instatement is not appropriate.

The Tribunal find in all the circumstances the claimant was unfairly dismissed and finds that the appropriate redress is under Section 7(1)(b) re-engagement by the respondent of the claimant.

The claimant is to be re-engaged on the 13 August 2012. There is to be no break in the claimant's continuity of service or in her pension contributions.

The appeal under the Redundancy Payments Acts, 1967 to 2007 was withdrawn by the claimant.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)