

## EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:

CASE NO.

EMPLOYEE- **Appellant (Employee)**

UD2349/2010

against a recommendation of a Rights Commissioner R-091551-UD-10/GC in the case of

EMPLOYER - **Respondent (Employer)**

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr P. O'Leary BL

Members: Ms J. Winters  
Mr T. Brady

heard this appeal at Dublin on 20 November 2012

#### **Representation:**

Appellant:

In person

Respondent:

Ms Emma Hanratty BL instructed by Ms Nicola Dowling,  
Joanne Kangley Solicitors, Anne Street, Bailieborough, Co. Cavan

This case came before the Tribunal as a result of an appeal by the employee (the appellant) against a recommendation of the Rights Commissioner under the Unfair Dismissals Acts **R-091551-UD-10/GC**.

The determination of the Tribunal was as follows:

The appellant, who is a clinical psychologist, worked as a functional family therapist for the respondent, which provides support therapy for families from 4 October 2007. The respondent receives its core funding from the Department of the Environment (formerly the Department of Community, Rural and Gaeltacht Affairs), it also receives funding from philanthropic organisations.

For 2009 the respondent suffered an 8% cut in Departmental funding. In October 2009 the respondent became aware of indications that it was likely they might suffer a further cut in Departmental funding of 15-20% for 2010. As a result of this budgetary information the respondent

was forced to implement a cost reduction programme. A decision was made to reduce the number therapists from five to four and the CEO and the deputy CEO (the deputy) met the appellant on 1 October 2012 and informed him that his contract was not being renewed because of the budgetary constraints. The appellant was given one month's salary in lieu of notice and given an ex-gratia payment of 2.5 months' salary. This was confirmed in a letter of 5 October to the appellant from the deputy which was accompanied by two cheques, for the notice and ex-gratia payments. 1 October 2010 was the last day the appellant worked for the respondent.

The respondent's position was that the appellant had been chosen as the candidate for redundancy because his fixed-term contract was up for renewal at the time the decision was made. The appellant's position was that his selection for redundancy was because of questions he had raised in regard to the reputation of a trainer the respondent was using and a Data Protection request the appellant had made.

### **Determination:**

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

*“This Act shall not apply in relation to a 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 without its being renewed under 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 or cesser aforesaid.”*

The appellant's contract of employment, which was signed by the appellant on 26 November 2008, at term 4 (Term of Contract) states

“This contract dates from 03/11/08 and will be subject to annual reviews. The continuation of the project and this position is dependent on funding, and should this be withdrawn in part or in whole we reserve the right to terminate your contract earlier than the expected date of 03/11/09.

Your employment will continue subject to satisfactory performance. Your employment may be terminated by giving one month's notice in writing, or on the company's side by payment of one month's salary in lieu.”

This contract does not comply with Section 2 (2) (b) of the Unfair Dismissals Acts, there is no provision that the Acts do not apply to this contract. Furthermore the contract does not state that it is for a fixed-term and indeed refers to annual reviews. Accordingly, the Tribunal does not accept that the appellant's employment ended by reason of the expiry of his contract.

For an employer to defend a claim of unfair dismissal where an employee's position has been declared redundant it is necessary for the employer to show that in addition to there being a redundancy situation existing in the employer it is also necessary for the employer to show that objective criteria were applied in the selection of that candidate for redundancy.

In the instant case the evidence revealed that some two weeks before the appellant's employment

was terminated a fifth therapist was hired by the respondent. The respondent did not seek to rely on any reason for the selection of appellant as the candidate for redundancy other than the purported expiry of his contract of employment. In these circumstances the Tribunal is not satisfied that the selection was impersonal as regards the appellant as the respondent has failed to show how any objective criteria were applied in the process. It must follow that the dismissal was unfair and the Tribunal hereby upsets the recommendation of the Rights Commissioner. Being cognisant that the appellant received an ex-gratia payment at the time of his dismissal the Tribunal makes an award of €20,000 under the Unfair Dismissals Acts, 1977 to 2007.

Sealed with the Seal of the  
Employment Appeals Tribunal

This \_\_\_\_\_

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