

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYEE

CASE NO.
UD1171/2010

against the recommendation of the Rights Commissioner in the case of:

EMPLOYER

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr F. Murphy

Members: Mr D. Morrison
Ms A. Moore

heard this appeal at Sligo on 23rd February 2012 and 15th May 2012

Representation:

Appellant: Ms Collette Mullins, I.N.O, Westside Business
Centre, 74 Old Seamus Quirke Road, Galway

Respondent: Mr. John O'Donnell, Personell Services,
Aras Slainte Chulainin, Manorhamilton, Co. Leitrim

Background:

This case is before the Tribunal by way of an employee appealing the Recommendation of a Rights Commissioner Ref: r-074953-ud-09/EOS under the Unfair Dismissals Acts, 1977 To 2007.

Respondent's case:

The Tribunal heard evidence from a representative for the respondent.

He gave evidence that the appellant had been recruited by an overseas recruitment agency, initially on a 2 year contract. A further year was then added to the contract. The appellant was offered a full time position for the same respondent at a hospital 35 miles away. He said that the appellant did not take up the post even though he was strongly advised to do so. It was always indicated to the appellant that he was on a temporary contract and while he was the longest serving temporary person a permanent person, from a panel, would replace him.

In cross-examination he explained that he did not say at any meeting that the employer was taking a course of action to avoid their obligations under the Fixed Term Work Act. His advice to the

employer was “not to do something to avoid legislation”.

He also explained that the appellant got a two year contract and then an extension to the initial two years. The appellant’s contract came to an end as they had a person coming “on-line” from the permanent panel. The appellant’s contract was not linked to a specific person. The appellant was offered the position of covering for maternity leave and he declined this offer. If he had accepted the offer it would have brought him over the time, i.e. he would have had accumulated service. If the appellant had indicated that he was available for further temporary work then they would give it to him.

The witness further explained that when a post becomes approved by the national committee it has to be advertised and given to someone from the permanent panel. They try to get as many permanent positions approved as possible. The appellant was on a permanent panel for two locations/hospitals but he was not on the permanent panel list for the respondent hospital. The appellant was offered a permanent post in another place and was strongly advised to take it by the director of nursing.

If the appellant had accrued four years’ service there would have not been a problem of offering him a contract of indefinite duration. There was no intention of trying to deprive the appellant of his rights.

Appellant’s case:

The Tribunal heard evidence from the appellant. He is from Mumbai and was interviewed in Mumbai for the position in Ireland. In September 2005 he arrived in Ireland. He commenced working in the respondent hospital in September 2005. He worked there for two years. In September 2007 he received a temporary contract for three months. He then got another contract from January 2008. At some point in time when all of the temporary contract employees received renewals he contacted a person in the respondent organisation. She told him that she could not say why he had not received one and would revert to him.

The appellant told the Tribunal that he was not offered maternity leave cover. He had applied for a permanent post in the respondent hospital.

At some point in time he was removed from the panel and he was shocked. He contacted someone about this and he was immediately placed back on the panel, however he was placed at the end of the list.

In cross-examination he agreed that he was advised to take a permanent post in another hospital.

The appellant explained that his contract expired and was not renewed while everyone else had their contracts renewed.

Determination:

The claim under the Unfair Dismissals Acts, 1977 To 2007 fails. The Tribunal upholds the Recommendation of a Rights Commissioner Ref: r-074953-ud-09/EOS.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)