

EMPLOYMENT APPEALS TRIBUNAL

APPEAL(S) OF:
EMPLOYEE - *appellant*

CASE NO.
RP2222/2011

against
EMPLOYER - *respondent*

under

REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr P. Hurley

Members: Mr T. Gill
Ms H. Henry

heard this appeal at Galway on 29th January 2013

Representation:

Appellant(s) :

Respondent(s) :

Claimant's Case

The appellant gave evidence that he commenced employment with the respondent as a senior executive engineer in February 2008. He was employed on a fixed term two year contract to replace employee (MC) who was seconded to a local authority. He gave evidence that when he took up his position with the respondent he was given a different role from that of (MC) and was given a role in major emergency planning. He also inherited a make up of two other individual's roles.

In January 2010 he was informed that his contract was extended beyond two years and was told that it was expected that his contract will cease on 31 December 2010. He continued to carry out his duties and on 22 September 2010 he received a letter stating that (MC's) secondment will cease on 31 December 2010 and he, (MC) will then be returning to his position with the respondent. In that regard he was informed that his temporary contract shall cease on 31 December 2010. However he was subsequently informed by way of letter dated 3 November 2010 that (MC's) secondment had been extended and (MC) will be returning from secondment on or before 30 June 2011 and his (the appellant's) temporary contract shall cease accordingly. His contract was ultimately terminated on 14 July 2011 following (MC's) return from secondment.

Respondent's Case

A senior staff officer for the respondent gave evidence that the appellant was hired to fill the role of (MC) while (MC) was seconded to another local authority. The expected initial duration of the appellant's contract was for two years. (MC's) secondment lasted longer than two years and the appellant's temporary contract was extended on a number of occasions to cover for (MC's) continuing absence on secondment. The appellant's contract was terminated following (MC's) return from secondment.

The witness gave further evidence that in the years prior to the appellant's employment the respondent employed five permanent senior executive engineers. That number has remained the same following (MC's) return from secondment and the termination of the appellant's contract. She gave evidence that the appellant's contract was a fixed purpose contract but the respondent could not know precisely the length of the contract and (MC's) secondment lasted longer than the initial expected two years duration.

Determination

Having considered the evidence and the statutory provisions the Tribunal is satisfied that the appellant was dismissed by way of redundancy. The Tribunal considered the relevant Acts and in particular S. 9 (1) (b) of the Redundancy Act 1967 as amended by S. 6 (b) of the Redundancy Payments Act 2003. The former provides:-

9 (1) 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

The latter provides:-

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

(b) where, under the contract under which the employee 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 similar contract or

The Tribunal finds that the appellant was employed for a specified purpose to fill the role of another named engineer who had been seconded to another local authority. The Tribunal finds that at the time of his engagement the duration of the appellant's contract was incapable of precise ascertainment. The Tribunal finds that when the appellant's contract was terminated he came under the protection of the Redundancy Payments Acts.

Accordingly the Tribunal awards the appellant a redundancy lump sum payment under the Redundancy Payments Acts 1967 to 2007 based on the following criteria:

Date of Birth: 8 January 1972
Date of commencement of employment: 18 February 2008
Date of termination of employment: 14 July 2011
Gross weekly pay: €1308.40

This award is made subject to the appellant having been in insurable employment under the Social Welfare Acts during the relevant period.

Please note that a weekly ceiling of €600 applies to all awards made from the Social Insurance Fund.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

