

EMPLOYMENT APPEALS TRIBUNAL

APPEAL OF:
EMPLOYER
Appellant (Employer)

CASE NO.
UD294/2010

Against the recommendation of the Rights Commissioner **R-080133-ud-09/SR**
in the case of:

EMPLOYEE – **Respondent (Employee)**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms. E. Daly B.L.

Members: Mr. D. Morrison
Ms. R. Kerrigan

heard this appeal at Letterkenny on 18th May 2011

Representation:

Appellant: Ms. Noreen McCosker, Sheridan & Co., Solicitors, Railway
Road, Letterkenny, Co Donegal

Respondent: Mr Noel Maguire, S.I.P.T.U., Port Road, Letterkenny, Co
Donegal

This case came to the Tribunal by way of an appeal by the employer(the appellant) against the decision of the Rights Commissioner under the Unfair Dismissals Acts 1977 to 2007 R-080133-ud-09/SR, in the case of an employee (the respondent).

Appellant's case

The respondent was employed as a caretaker on an oral contract to cover sick leave. The employment began on 6th February 2007 and it was unknown when the sick leave period would end but the contract was for a specific purpose.

Instead of a return to work after sick leave a retirement occurred. The respondent continued to work in the post but was aware at all times that the job would be advertised.

The post was advertised but a moratorium on recruitment was issued by the Department (Circular 23/2009) and it became clear that the post would not be filled. No competition took place.

Respondent's case

The respondent stated in his sworn evidence that he was employed to cover sick leave. On the retirement of his colleague in October 2008 he did ask what the school principal what was going to happen. He was told it would be up to the V.E.C. but to keep his head down. He felt that he was no longer on a specific purpose contract and believed that he had secured his position. He continued to work and the post was advertised in April 2009. He applied for the job to show his interest in remaining in the post. He received notification on Wednesday 27th May 2009 advising him of termination of his employment on Friday 29th May 2009.

Determination

It is accepted that this was a specific purpose contract determined by when the person on sick leave returned. The person on sick leave retired rather than returning to work.

This led to the advertisement of the job in order to fill the post. The respondent was told by the principal that it wasn't up to him to fill the post, it would have to be done by the V.E.C.

The job was advertised.

Subsequently a moratorium issued from the department which prevented any recruitment.

The claimant was dismissed because of the effect of the moratorium which meant that the position no longer existed. In effect it was a redundancy situation.

The Tribunal finds that the dismissal was procedurally unfair. No notice was given, the respondent was dismissed.

The Tribunal also finds that the respondent would be at no financial loss because the position no longer existed by virtue of the effect of the moratorium, issued by the Department. The V.E.C. had to act upon the instruction of the moratorium.

Therefore the loss is reduced to – no loss – because the position no longer existed from then on.

Accordingly the Tribunal (by majority) varies the decision of the Rights Commissioner R-080133-ud-09/SR and awards the respondent four weeks of pay.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

