

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE –**claimant**

UD253/2010

against

EMPLOYER –**respondent**

under

UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr S. Mahon

Members: Mr P. Pierson
Mr T. Brady

heard this claim at Mullingar on 10 June
and 4 November 2011

Representation:

Claimant:

Mr Patrick O'Brien BL, instructed by Ms Esther Morrissey,
McMahon Goldrick Solicitors, 130-132 The Capel Building,
Mary's Abbey, Dublin 7

Respondent:

The determination of the Tribunal was as follows:

The claimant was employed on a fixed term contract of five-year duration from 27 September 2004 as an executive scientific officer. The claimant's contract of employment contains no clause stating that the Unfair Dismissals Acts shall not apply to a dismissal consisting only of the expiry of its term as provided in Section 2 (2) (b) of those Acts and consequently the claimant was not prevented from bringing this claim on the expiry of the term of his contract.

His position was as team leader of the Waste Enforcement Team and was one of 3 positions funded by a grant from the Department of Environment, Heritage and Local Government pursuant to circular WIR 10/03 of 12 August 2003 from that Department (DofE). This circular envisaged the funding continuing from its start date in 2004 until 2014. Subsequent circulars opened to the

Tribunal reveal that this funding has indeed been approved until 2014.

Following the onset of the economic downturn in 2008 the Local Authority National Partnership Action Group (LANPAG) on which both local authorities and trades unions are represented at senior level was tasked with finding agreement on methods of meeting the strictures imposed by the downturn. At its meeting on 30 September 2008 proposals were tabled which were set out in a document dated 2 October 2008 in which it was agreed that, inter alia, in circumstances where there is a policy of no compulsory redundancy of permanent pensionable employees then cost savings would be achieved by the elimination of fixed term posts.

The respondent implemented a policy of cost savings which included the non-renewal of fixed-term contracts in line with government policy as set out in government decision S180/20/10/0964C of 3 February and 24 March 2009 whereby any exceptions to this principle required the prior sanction of the Minister for Finance.

The respondent's Acting Director of Services (DS) in the Human Resource Department wrote to the claimant on 20 July 2009 to inform him that the respondent was not in a position to continue his contract after its expiry date on 26 September 2009. DS again wrote to the claimant on 23 July 2009 setting out the details of the redundancy lump sum payment which the claimant was to receive on termination. On 7 August 2009 the claimant's trade union branch organiser (TU) wrote to DS pointing out that the work which the claimant was performing was to continue in line with the grants from DofE being confirmed to continue until 2014 and seeking the withdrawal of the threat of termination. DS rejected this demand in a reply on 20 August 2009. The claimant accepted the redundancy lump sum under protest and his employment ended on 26 September 2009.

The environment section of the respondent consisted of 29 staff in February 2009; by January 2010 this number had reduced to 27. This reduction was effected by the non-renewal of one other fixed-term contract apart from that of the claimant. The position of team leader, previously held by the claimant, was taken on by a suitably qualified permanent pensionable employee who was redeployed from their previous position in the section.

The respondent's position is that the claimant was selected for redundancy in a situation where the respondent had decided to carry on the business with fewer employees as set out in Section 7 (2) (b) of the Redundancy Payments Acts and the selection of the claimant as a candidate for redundancy had been made in accordance with an agreed procedure, as set out in the LANPAG document of 2 October 2008, and as provided in Section 6 (3) (b) of the Unfair Dismissals Acts, such as to amount to a substantial ground justifying the dismissal.

Determination

Whilst the respondent was not able to rely on Section 2 (2) (b) of the Unfair Dismissals Acts to prevent the bringing of this claim due to the non-inclusion of the prescribed clause in his contract the claimant was, nevertheless, still employed on a fixed-term contract with a specified termination date. The Tribunal is satisfied that the LANPAG document of 2 October 2008 sets out an agreed procedure for the selection of candidates for redundancy. This procedure includes the non-renewal of fixed-term contracts. The Tribunal is further satisfied that the claimant was selected as a candidate for redundancy as a fixed-term contract worker in accordance with the agreed procedure. For these reasons the claim under the Unfair Dismissals Acts, 1977 to 2007 must fail as the dismissal was not unfair.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)