

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:  
EMPLOYEE -*Claimant*

CASE NO.  
UD390/2012  
RP681/2011

against  
EMPLOYER -*Respondent A*

EMPLOYER -*Respondent B*

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2007 REDUNDANCY PAYMENTS ACTS, 1967 TO 2007

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms K.T. O'Mahony B.L.

Members: Mr J. Horan  
Ms S. Kelly

heard this claim at Wexford on 4th July 2012

#### **Representation:**

Claimant: Mr. Padge Reck, Sunrise, Mulgannon, Wexford

Respondent A: Assistant Principal Officer

Respondent B: Mr. Mark Harty B.L. instructed by Mason Hayes and Curran,  
South Bank House, Barrow Street, Dublin 4

#### **The determination of the Tribunal was as follows:**

The claim under the Unfair Dismissals Acts, 1977 to 2007, was withdrawn at the outset of the hearing.

The Tribunal heard evidence from the principal of the school which employed the claimant. The principal was approached by the existing full-time special needs assistant who requested to job share. Permission was given by the relevant government department to enter into this arrangement and as a result the claimant was employed as a part-time special needs assistant. The principal assumed that there would be some protection afforded to both occupants of the post.

The claimant was employed from September 2003 to August 2010 on a series of fixed-term

contracts and her salary was paid by the relevant government department. The Tribunal was informed that the department has a contract for full and part time special needs assistants but currently there is no contract specifically for job-sharing special needs assistants. However, once the full-time post holder confirmed her intention to continue job-sharing for the following school year the claimant's employment continued.

This remained the *status quo* until the child to whom they were assigned entered into his final year of primary school in July or September 2010. The original post holder applied for a return to full time hours from the 1<sup>st</sup> September 2010. Consequently, the claimant's employment was terminated on the 31<sup>st</sup> August 2010 and it was her case that she was therefore entitled to a redundancy payment.

Subsequently, the full-time post holder's role became redundant the following year when the child left the school and there were no other pupils in the school with special needs at that time. The full-time post holder was paid redundancy based on a full week's wages for the entirety of her continuous service in the school.

The board of management of the school employed the claimant but the relevant government department paid the claimant her salary and therefore for the purposes of a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, Respondent A is deemed to be the employer. This was confirmed by an Assistant Principal Officer from Respondent A.

Giving evidence, the Assistant Principal Officer stated that it was the board of management who agreed to the job-sharing arrangement in 2003 with the existing full-time post holder. This agreement was put in place in the absence of an agreed scheme with the relevant government department. The Assistant Principal Officer accepted that the department paid the claimant throughout her period of service.

It was the department's case that the claimant was employed by the school on a temporary basis to cover the absence of the existing post holder on a week-on / week-off basis for the duration of the job-sharing arrangement. Accordingly, in terms of the government circular 58/2006 a redundancy situation arises where the post ceases to exist. In this case the post did not cease to exist at the time of the 31<sup>st</sup> August 2010 and in addition, there was no reduction in the allocation of hours to the school for a special needs assistant at that time, therefore a redundancy situation did not arise.

### **Determination:**

Section 9(1) of the Principal Act as amended by the Act of 2003, states that an employee shall be taken to be a dismissed by his employer,

*“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, ..”.*

The Tribunal finds that the claimant's specified role of special needs assistant on a job-sharing basis became redundant when the post holder returned to full-time employment, as the requirement for the claimant's work on a part-time work-shared basis ceased at that time. Accordingly, the Tribunal finds that the appellant is entitled to a lump sum payment under the Redundancy Payments Acts, 1967 to 2007, based on the following criteria:

Date of Birth:	17 <sup>th</sup> April 1962
Date of Commencement:	9 <sup>th</sup> September 2003
Date of Termination:	31 <sup>st</sup> August 2010
Gross Weekly Pay:	€284.00

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

Sealed with the Seal of the  
Employment Appeals Tribunal

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