

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

EMPLOYEE - *claimant*

UD1262/2011
MN1367/2011

Against

EMPLOYER - *respondent*
under

MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2005 UNFAIR DISMISSALS ACTS, 1977 TO 2007

I certify that the Tribunal
(Division of Tribunal)

Chairman: Ms N. O'Carroll-Kelly BL

Members: Mr P. Pierson
Mr N. Dowling

heard this claim at Mullingar on 13th February 2013 and 5th June 2013

Representation:

Claimant: Ms. Mary Paula Guinness BL instructed by:
Ms. Anne Brennan, O'Mara Geraghty McCourt, Solicitors,
51 Northumberland Road, Dublin 4

Respondent: Mr. John Brennan, IBEC, West Regional Office, Ross House, Victoria Place,
Galway on 13th February 2013
And Mr. Mark Connaughton SC, instructed by Mr. John Brennan, IBEC, West
Regional Office, Ross House, Victoria Place, Galway on 5th June 2013

The determination of the Tribunal was as follows:-

Background:

The respondent is a third level institution located in the west of Ireland. The claimant commenced employment with the respondent in 2004 on a fixed term contract on a Post-Doctoral Research Contract with NCBES. The contract was effective from 1st October 2004 to 30th October 2006. The funding for these projects was from various sources including semi-state bodies.

In July 2006 a second “*full time specific purpose Contract Research Appointment*” was confirmed from 1st September 2006 to 31st July 2008 “*at which date the contract will cease due to cessation of funding for this project*”. From this date the claimant reported to not only his supervisor, DL but his own wife Dr. B. F.

On 11th September 2008 the claimant was issued with a Contract of Indefinite Duration (C.I.D.) in the NCBES as a Post-Doctoral Researcher from 1st October 2008. In 2009 it became apparent the funding on the project the claimant was employed on could cease. On 21st October 2009 an email was submitted to Dr. BF stating the funding could be renewed or terminated on the project the claimant was working on. If the funding terminated the claimant would be made redundant as per the legal obligations under the Redundancy Payments Acts, 1967 to 2007. Dr. BF replied that the claimant's post would be renewed.

On 27th January 2010 an email of the same content was sent to Dr. BF who replied the claimant's funding would be extended. On 28th February 2011 the claimant was advised that his Contract of Indefinite Duration (C.I.D.) would expire on 31st March 2011 and would be entitled to a redundancy package. He was requested to forward an up to date curriculum vitae in order for the respondent to try and seek alternative employment for him. An email was sent to various departments of the respondent with the claimant's and two colleagues' curriculum vitae to see if there was alternative employment for them. At this point the claimant had been seconded to a university in Dublin for a number of months for personal reasons.

The claimant was made redundant on 31st March 2011. He did not accept the redundancy payment.

Respondent's Case:

The Human Resources Manager for Employee Relations gave the aforementioned background evidence.

On cross-examination he stated the claimant had been made redundant as the funding for his project had ceased. This was a common factor with staff of the respondent company. When asked he said the system of last in first out was not used (LIFO) or the legal method of comparing the claimant's position to his peers to ascertain who would be made redundant.

The witness could give no evidence of responses to the email regarding alternative employment for the claimant.

AS is Head of the School of Physics since February 2013 having previously worked in the school for many years. He explained that research is funded by outside agencies. He encouraged staff to teach on a voluntary basis.

Funding for projects can last a maximum of five years. Funding for research has declined over the last five years. The number of post-doctoral researchers is down significantly.

Claimant's Case:

The claimant commenced employment with the respondent in 2004 on a fixed term contract on a Post-Doctoral Research Contract with NCBES. The contract was effective from 1st October 2004 to 30th October 2006. In July 2006 he was offered a full time specific purpose contract effective from 1st September 2006 to 31st July 2008. This contract was subsequently extended to 30th September 2008. The contract was dependent on funding.

On 11th September 2008 the claimant was issued with a contract of indefinite duration in NCBES as a Post-Doctoral Researcher effective from 1st October 2008.

The claimant was promoted to Research Fellow effective from 1st May 2010 with all terms and conditions as previously advised on his contract of indefinite duration remaining.

During the claimant's tenure he also prepared lecture courses, supervised students and also carried out teaching duties. He was very much part of the respondent's staff.

The claimant was seconded to a university in Dublin on 1st September 2010 as there were better facilities there. His employment was terminated on 31st July 2011. He had an identity card from the respondent with an end date of 30th July 2041.

On 3 February 2011 ML informed the claimant that the funding for his project would be running out. The claimant was very surprised to hear this. By letter dated 28th February 2011 the claimant was advised that his contract would expire on 31st March 2011 and that he was entitled to redundancy. He was asked to forward his CV so that the respondent could seek suitable alternative employment for him.

The claimant sent a series of emails to HR with his concerns about the cessation of his contract. The respondent indicated that in the event of no suitable alternative employment being found they would prepare the redundancy paperwork with an end date of 31st March 2011.

A letter was sent to the claimant on 23rd March 2011 setting out his entitlement to a statutory redundancy payment of €8,400.00. The claimant did not accept this payment. The claimant contended that the selection process for his redundancy was unfair.

Following the termination of the claimant's employment he was unemployed until August 2011. He secured work in another university until June 2012. He then moved to France with his family and secured a short term internship. The claimant is now engaged on a contract of indefinite duration since 1st January 2013.

The claimant contended that it was not his intention to remain in France as his primary residence was in the west of Ireland.

Determination:

The definition of redundancy was first set out in the Redundancy Payments Acts 1967. It has been amended by the 1971 and 2003 Acts. It now reads as follows:

“ For the purpose of subsection (1), an employee who is dismissed shall be taken to be dismissed by reason of redundancy if for one or more reasons not related to the employee concerned the dismissal is attributable wholly or mainly to –

- (a) the fact that his employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by him, or has ceased or intends to cease, to carry on that business in the place where the employee was so employed, or
- (b) the fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed have ceased or diminished or are expected to cease

- or diminish, or
- (c) the fact that his employer has decided to carry on the business with fewer or no employees, whether by requiring the work for which the employees had been employed (or had been doing before his dismissal) to be done by other employees or otherwise, or
 - (d) the fact that his employer has decided that the work for which the employee had been (or had been doing before his dismissal) should henceforward be done in a different manner for which the employee is not sufficiently qualified or trained, or
 - (e) The fact that his employer has decided that the work for which the employee had been employed (or had been doing before his dismissal) should hence forward be done by a person who is also capable of doing other work for which the employee is not sufficiently qualified or trained'

Section 10 (b) of the Redundancy Payments Act, 1971, provides that:—

"(b) an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy."

The claimant was employed by the respondent university since 2004. He commenced his employment on a "*Post Doctoral Researcher, fixed term contract.*" The contract was effective from the 1st October, 2004 to the 30th October, 2006. In July 2006 a second "*fulltime specific purpose contract research appointment*" was confirmed from the 1st September 2006 to the 31st July 2008 "*at which date the contract will cease due to cessation of funding for this project.*" On the 18th June 2008 the claimant's contract was extended from the 1st August, 2008 to the 30th September, 2008. On the 11th September, 2008 the claimant was notified that the respondent was issuing him with a contract of indefinite duration in the NCBES as a Post-Doctoral Researcher effective from the 1st October, 2008.

There is no doubt that the claimant's position was dependent upon continued funding. The claimant also conceded that the position was dependent upon funding.

On the 21st October, 2009 and the 27th January, 2010 an e-mail in relation to the funding and the extension of the claimant's contract was sent. On both occasions the funding was secured and the contract was renewed. On the 28th February, 2011 the claimant was notified by letter that his contract would expire on the 31st March, 2011. He was requested to submit a CV and that was sent to various departments in an attempt to seek alternative employment for the claimant.

The claimant made much of the fact that his CV was not sent to every possible source and that there were others who should have been selected before him. However, the claimant was very high skilled in a very specific area. He was employed for a specific purpose and that specific purpose was funding dependent. The respondent is obliged in law to make reasonable efforts to secure alternative employment for the employee. The respondent is not obliged to make some other employee redundant in order to give that position to the claimant. It is the position and not the person that is made redundant. The respondent is not obliged in law to make arduous efforts exhausting every single possibility available. The respondent did make reasonable attempts to secure alternative employment for the claimant and their shortcomings in this regard are not such as to render the redundancy an unfair dismissal. The claimant was informed adequately that due to cessation of funding his position was going to be made redundant.

In all the circumstances the Tribunal finds that the claimant's claim under the Unfair Dismissals Acts 1977 to 2007 fails.

The claim under the Minimum Notice and Terms of Employment Acts, 1973 to 2005 also fails.

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)