

Labour Court

Foreign Affairs discriminate against fixed term contract members



Theresa Dwyer, Ann Byrne, Denis Hurley, Mary Gibbons, Linda Collins, Coira Murphy, Kathleen Moran, Tanya Hurley

In a recent determination of an appeal against a Rights Commissioner's decision the Labour Court has found in favour of six CPSU members employed by the Department of Foreign Affairs in the Passport Office.

Union argument

The members in question were represented by Theresa Dwyer, Industrial Relations Officer, who took the case under the Protection of Employees (Fixed-Term Work) Act 2003.

The Union argued that the members involved were entitled to a contract of indefinite duration under fixed term legislation and that they were afforded less favourable conditions of employment than comparable permanent employees in not being paid over the Christmas period in 2004 /2005.

The claims which had originally been presented to the Rights Commissioner who determined that the complaints were well founded and awarded redress by way of a declaration that five of the six claimants were entitled to a contract of indefinite duration with effect from 1st January 2006. The sixth claimant was deemed not to have sufficient continuous service as required under the legislation to warrant a contract of indefinite duration. The Rights Commissioner also awarded all six claimants compensation of €500. The Department appealed the Rights Commissioner's Decision to the Labour Court and a hearing took place on the 29th November, 2006.

Department's decision

The Department argued that the continuity of the Claimant's employment was broken each time their fixed-term contract expired. It was pointed out that in every case the ending of one contract and the commencement of another was separated in time by a number of weeks or months therefore none of the members had completed his or her third year of continuous employment whereby they would have entitlement to contracts of indefinite duration. The Department told the

Court that the members were employed to meet the temporary and seasonal needs of the Passport Office which experiences heavy demand at particular times during the year and to deal with temporary work involving the introduction of a new automated passport system and the then proposed decentralisation of parts of the Office to Balbriggan, Co Dublin.

The Department went on to argue that the members were not employed in the period in respect of which they are seeking payment. It was pointed out that their fixed-term contracts had expired in each case on 17th December 2004 and the Claimants did not resume their employment with the Respondent until 4th January 2005. The Union argued that the members had been employed on a succession of fixed-term contracts since 2001. It was pointed out that five of the members had been employed on 13 separate fixed-term contracts and the sixth had been employed on 11 such contracts. The Union supported the Rights Commissioner's conclusion that the periods between the expiry of one contract and the commencement of another were periods of lay-off which did not break the continuity of their employment.

indefinite duration
The Union further argued that it was evident from the aggregate duration of the employment that the purpose for which they were employed was to address a permanent as opposed to temporary need. In these circumstances the Union argued that that the members became entitled to a contract of indefinite duration and that by being laid-off without pay over the Christmas period the Claimants were treated less favourably than comparable permanent employees who were paid over that period.

Conclusions of the Court

In its determination the court found in favour of the CPSU members, it stated;

It will be noted that a lay-off arises where an employer

is unable to provide the employees with the work which the employee was employed to do. The Court cannot accept that the Claimants could not have been engaged in work to the same degree as others over the relevant period. In that regard it is significant that the Claimants' contracts were renewed on 22nd December 2004. The only practical consequence of deferring their re-commencement date was that they were taken off the pay-roll over the Christmas period.

Section 6 of the Act provides, in effect, that fixed-term employees shall not be treated less favourably than comparable permanent employees in respect of conditions of employment. Conditions of Employment are defined as including conditions relating to remuneration and matters related thereto. Taking an employee off the payroll is clearly a matter related to remuneration. It is therefore treatment in respect of a condition of employment coming within the ambit of s6 of the Act. No comparable permanent employees were taken of the payroll over this period. It follows that the Claimants were treated less-favourably than comparable permanent employees contrary to s6 of the Act. The Court can see no objective ground upon which this less favourable treatment could be justified. Accordingly the Claimants are entitled to succeed. The Court is further satisfied that the award made by the Rights Commissioner in respect of this aspect of the case is proportionate and appropriate.

Speaking to Aontas Theresa Dwyer Industrial Relations Officer said ' this is a very important decision for fixed term workers, not just in the Passport Offices of the Department of Foreign Affairs but right across the Civil Service in terms of preventing abuse and exploitation of fixed term workers'.

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As we go to press the department has indicated that it intends to appeal the decision to the High Court.

For the Attention of all Members on Fixed-Term Contracts

The Protection of Employees (Fixed -Term Work) Act 2003 came into force in July 2003 and provides for the following:

1. Where on or after July 2003 an employee on a Fixed-Term Contract completes or has completed his/her third year of continuous employment with his/her employer, then his/her fixed-term contract may be renewed on only one occasion and any such renewal can only be for a fixed term of no longer than one year.

Or

2. Where after July 2003 an employee is employed on a fixed-term contract on two (2) or more continuous fixed-term contracts and the date of the first contract is subsequent to July 2003, an aggregate duration of such contracts should not exceed 4 years.

Unless

3. There are "objective grounds" by the employer justifying such a renewal.

The Union had a successful outcome to an important case taken on behalf of Fixed-Term Workers in the Department of Foreign Affairs where the Labour Court upheld the initial decision of the Rights Commissioner.

There is a 'Time-Limit' of six months in lodging cases with the Rights Commissioner Office.

So if you think you are being discriminated against as a Fixed Term Worker – seek the advice of your Union Official.

ROSALEEN GLACKIN
Deputy General Secretary