



# Cúirt Uachtarach na hÉireann Supreme Court of Ireland

**In the matter of an appeal pursuant to Section 46 of the Workplace Relations Act 2015  
And in the matter of the Protection of Employees (Fixed-Term Work) Act 2003**

**Maurice Power v Health Service Executive**

**On appeal from: [\[2021\] IEHC 346](#)**

The Supreme Court today held that the trial judge was correct in finding that the Labour Court had erred in law in its interpretation of the definition of “fixed-term employee”, pursuant to s.46 of the Workplace Relations Act 2015, and in deciding that Mr. Power was a fixed-term employee, and was correct in making an order setting aside the Labour Court’s determination and remitting the matter back to the Labour Court for reconsideration.

## **Composition of Court**

MacMenamin, Charleton, O’Malley, Woulfe, Hogan JJ.

## **Background to the Appeal**

This appeal centred upon the question of whether an employee who enjoys undisputed permanent employment status with their employer may, by reason of filling a more senior role with that employer on successive fixed-term contracts for more than four years, be entitled to be treated as a fixed-term employee of that employer for the purposes of the Protection of Employees (Fixed-Term Work) Act 2003. Such an employee may argue that they are entitled to a contract of employment for an indefinite term, pursuant to s.9 of the 2003 Act, in the absence of objective grounds justifying the use of a fixed-term contract in the circumstances. Here the aggregate duration of the successive fixed-term contracts was in excess of four years, after which the employer sought to remove him from that position and return him to a lower ranked/paid position that he had previously occupied for several years. The Labour Court held that the employee was not a fixed-term employee, but the High Court set aside this determination, and the HSE was then given leave to appeal to this Court.

## **Judgment**

The Supreme Court dismissed the appeal, with all of the judges agreeing that the trial judge was correct in the conclusions he reached.

## **Reasons for the Judgment**

In the only judgment in this appeal, Woulfe J. considered that the construction of the words “fixed-term employee” must take place in the context of the respondent’s claim that there had been a

contravention of s.9(2) of the Act. As a consequence, the references to “the contract concerned” in s.9(3), and to “the end of the contract of employment concerned” in the definition of “fixed-term employee” in s.2, appeared to him to be of significance. These references appeared to Woulfe J. as being consistent with the view adopted by the High Court that an individual may be employed by the same organisation in a series of different posts, pursuant to a consecutive series of contracts of employment. **[para. 46]**

In the opinion of Woulfe J. the reference to “the contract concerned” in s.9(3) of the Act relates to the contract operative at the relevant time, being the time that a series of two or more continuous fixed-term contracts has caused the aggregate duration of such contracts to exceed four years, i.e. the last fixed-term contract giving rise to that excessive aggregate duration. In the present case the contractual documents suggested that the respondent was employed as Interim CEO during the relevant period pursuant to five successive contracts of employment. These contracts ran from October, 2014 to September, 2019 which is when a new CEO was appointed. On this basis the respondent was on the face of it a fixed-term employee, as the end of each of the contracts of employment concerned was determined by an objective condition, such as arriving at a specific date or the occurrence of a specific event. **[para. 47 - 48]**

It appeared to Woulfe J. that the respondent’s previous 2012 contract of employment as CFO was either terminated, or at least suspended, when the respondent entered into a consecutive series of contracts of employment as Interim CEO between October, 2014 and December, 2018. Woulfe J. held that as the respondent was a fixed-term employee during the relevant period, he could not by definition also have been a permanent employee for the purposes of the Act. **[para. 55]**

It seemed to Woulfe J. that the correctness of the trial judge’s conclusions were reinforced by considering the overall effect of the appellant’s submissions. The effect would be to remove the application of the Act from one entire cohort of employees, i.e. employees who are already in a permanent employment relationship with their employer, but who agree to “act up” in a higher role on a temporary basis. The Framework Agreement, however, and the Irish legislation giving effect to same, contain no express exclusion of such employees, and it seemed to Woulfe J. that very clear language providing for any such exclusion would have been necessary. **[para. 56]**

#### **Note**

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

#### **Case history**

[\[2021\] IESCDT 110](#)

Supreme Court Determination granting leave

[\[2021\] IEHC 346](#)

Judgment of the High Court (**judgment which was the subject of the appeal to the Supreme Court**)