TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1974
s29(1) application for hearing of an industrial dispute

Dolly-Neo Marope
(T14826 of 2021)

and

Minister administering the State Service Act 2000 – Tasmanian Health Service

PRESIDENT BARCLAY HOBART, 28 APRIL 2021

Unfair dismissal – former employee in fixed term employment – application to dismiss on basis that the applicant had no reasonable expectation of ongoing employment – construction of s 30 of Industrial Relations Act considered

DECISION

[1] The Applicant has made an application for an unfair dismissal remedy. The Applicant was employed pursuant to a fixed term Instrument of Appointment (IOA). She had been employed under a series of fixed term IOA's commencing 1 August 2016. The final IOA was dated 6 March 2019 and provided that the appointment would end on 6 March 2022.

[2] By email of 11 December 2020 the Applicant was advised that her employment would be terminated effective from 25 December 2020.

[3] The Applicant, consistent with *MASSA v Prasad*[1] (which held as a result of s 30(1) of the *Industrial Relations Act 1984* (the Act) and the meaning of continuing employment, that where an employee is employed pursuant to an IOA with an expressed end date, that employee cannot have a reasonable expectation of ongoing employment and as a result the employer does not need to have a valid reason for termination) argues that the termination of the employment was unfair.

[4] The Respondent now submits that the Application should be dismissed on the basis that the Commission has no jurisdiction to make an order, or the order sought as a finding of unfair dismissal can only be made in relation to an employee with a reasonable expectation of ongoing employment. The Respondent argues that when the Full Bench in *Prasad* went on to consider whether the dismissal was unfair in that case (having found that the employer was not required to have a valid reason for termination because the employee was employed under a fixed term IOA) the Full Bench fell into error.

[5] Whilst the Respondent refers to the issue as being jurisdictional, rather I think the application is properly to be understood as one invoking s 21(2)(c)(iv) of the Act which provides that the Commission may, in relation to a matter before it at any stage of those proceedings, dismiss a matter or a part of a matter, or refrain from further hearing, or

[1] T14682 of 2019

determining, the matter or part if the Commission is satisfied that, for any other reason, the matter or part should be dismissed or the hearing of those proceedings should be discontinued, as the case may be.

[6] I do not regard the Respondent application as raising the issue of jurisdiction in the ordinary sense that the Commission is without power to deal with the application as the jurisdictional facts to ground jurisdiction for the Commission to hear an unfair dismissal application are:

1. That the Applicant is a former employee;

2. That the former employees employment has been dismissed; and

3. There is a dispute as to the validity of the termination of the employment.

[7] All of those jurisdictional facts exist in this case. Accordingly I will treat the application as invoking s 21 of the Act.

[8] This decision is limited to the Respondents application that I should dismiss the Application because the Commission cannot make any order, or the order sought.

The Respondents Submissions

[9] The Respondent submits that on a proper construction of s 30 of the Act, the Commission may only make orders in respect to the unfair dismissal of an employee who has a reasonable expectation of ongoing employment. It submits that a reasonable expectation of ongoing employment is a jurisdictional fact for the exercise of the power to make any orders.

[10] The parties are in substantial agreement as to the approach to be taken when undertaking her task of construction. The Respondent put it this way[2]:

> "The task of construction must focus on the text to be interpreted, in the context of the provision and bearing in mind its object and purpose. The language of the provision is to be construed by reference to the statute as a whole. An interpretation that promotes the purpose or object of the Act is to be preferred to an interpretation that does not promote the purpose or object. Consideration may be given to extrinsic material capable of assisting in the interpretation." (Footnotes omitted).

[11] Where the parties disagree is in respect to the past point relating to the use of extrinsic materials. The use of extrinsic materials is dealt with by s. 8B of the *Acts Interpretations Act 1931* which (relevantly provides):

> (1) Subject to subsection (2) , in the interpretation of a provision of an Act, consideration may be given to extrinsic material capable of assisting in the interpretation –
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> (a) if the provision is ambiguous or obscure, to provide an interpretation of it; or
>
> (b) if the ordinary meaning of the provision leads to a result that is manifestly absurd or is unreasonable, to provide an interpretation that avoids such a result; or

[2] Respondents Submissions paragraph 5

(c) in any other case, to confirm the interpretation conveyed by the ordinary meaning of the provision.

(2) In determining whether consideration should be given to extrinsic material, and in determining the weight to be given to extrinsic material, regard is to be given to –

(a) the desirability of a provision being interpreted as having its ordinary meaning; and

(b) the undesirability of prolonging legal or other proceedings without compensating advantage; and

(c) other relevant matters.

[12] The Applicant submits that as a result of s 8B I am not permitted to have regard to extrinsic material relied upon by the Respondent (clause notes and second reading speeches) as the preconditions of s 8B(1)(a) and (b) have not been met. I note however that the Applicant does suggest that I may have regard to the extrinsic material to confirm the ordinary language. I note that the provisions relate to meaning and not language. Accordingly I may have regard to extrinsic material to confirm the interpretation conveyed by the ordinary meaning of the provision. I propose to do so noting subsection 2(a) and the desirability of the provisions of the Act being interpreted as having their ordinary meaning.

[13] In respect to the desirability of the provisions being interpreted as having their ordinary meaning those who are bound by and seek to enforce the Act are very often lay people with no legal training (employees, union officials and employees of government departments) . It is desirable therefore that if possible (so far as permitted by the text) the words are interpreted as having their ordinary meaning.

[14] The Respondent analyses s 30 of the Act as follows[3]:

"6. It is submitted that when s 30 is considered as a whole, and in light of the context of the IRA and its purpose, it is clear that s 30 only applies if the threshold in subsection (3) is met: the employee has a reasonable expectation of continuing employment. Looking carefully at each of the subsections of s 30, it can be seen that rather than working separately and creating number of different possible bases for a finding of unfair dismissal, the subsections interlink and work together; specifically

(1) is introductory, it provides definitions;

(2) is also introductory, it mandates a fair approach;

(3) is the primary operative provision: it prohibits the termination of the employment of an employee with a reasonable expectation of employment unless there is a valid reason for the termination connected with (a) the capacity, performance or conduct of the employee; or (b) the operational requirements of the employer's business;

(4) relates to (3), it gives examples of what are not valid reasons;

(5) and (6) are procedural – who will have the onus of proving what; first, it is for the employer to prove the existence of a valid reason, if it

[3] Respondents submissions par 6 - 8

cannot, the termination is contrary to (3) and that is the end of the matter; but if the employer has proven the existence of a valid reason, then the employee may nevertheless assert that the termination was unfair (for example, because the valid reason did not justify termination in all the circumstances), proof of which is on the employee;

– (7) qualifies how termination should occur if it relates to the employee's 'conduct, capacity or performance' – a clear reference back to (3)(a);

- (8) relates directly to (7);

-(9) onwards relate to remedy

7. Thus, it can be seen that the jurisdictional fact is 'a reasonable expectation of continuing employment'. If an employee does not have such an expectation, s 30 is of no application. That is the ordinary meaning of the provision read as a whole. Consistently, since the introduction of s 30 some 20 years ago,5 until Prasad, no decision of the Commission has purported to exercise jurisdiction under s 30 unless there was a reasonable expectation of continuing employment.6

8. Subsection (6), which is clearly procedural, does not establish a separate jurisdiction that might apply to the termination of any employment, regardless of whether the employee had a reasonable expectation of continuing employment. Although it is true that s 30(6) refers only to 'employment' being unfairly terminated, (not 'the employment of a person who has a reasonable expectation of continuing employment'), the same can be said of subsections (4), (5), (7) and (8), yet it is beyond question that those subsections are dealing only with employment with the relevant expectation. The explanation for this is that subsection (3) creates a threshold criteria for disputes relating to the termination of employment, so in all the subsections that follow, the term 'the employment' essentially becomes shorthand for ''the employment of an employee who has a reasonable expectation of continuing employment."

[15] In respect to extrinsic materials the Respondent has this to say[4]:

"12. Section 30 is headed 'Criteria applying to disputes relating to termination of employment'. It was inserted into the IRA by the Industrial Relations Amendment Act 2000. The relevant clause note said:

> Please note that this is a new section. The intention is to codify existing criteria and practice and to clearly articulate the 'rules' relating to what constitutes unfair dismissal, natural justice and remedies available to employees.

13 That intention was also stated in the second reading speech:

> For the first time, the Act will contain clear and fair criteria relating to unfair dismissal. Much of what is included is simply setting down existing practice and precedents into codified form. The intention behind this is to bring a level of clarity and certainty to this area so that employees and employers understand the fundamental rights, obligations and processes involved. It is hoped that by so doing much of the confusion and misunderstanding currently in evidence in relation to unfair dismissals will be eliminated.

[4] Respondent submissions pars 12 - 17

14. As discussed by Underwood J in the first instance decision of Port of Devonport v Abey, 12 prior to that second reading speech the Opposition proposed an amendment to the bill which would have inserted a subsection (3A) after s 30(3), which would have provided (inter alia) that employees contracted for a specific period of time were excluded from making an application under ss 29, 30 or 30A. After proposing the amendment the then Shadow Attorney-General said:

> This is an important area of the bill which sets out criteria applying to disputes relating to termination of employment and the phrase used in proposed section 30(3) is 'The employment of an employee who has a reasonable expectation of must not be terminated unless there is a valid reason'. So it is limited to people who have reasonable expectations of employment. We wish to spell that out in a bit more detail…

15. In response, the Minster essentially said he would leave it to the Commission to determine what is 'continuing employment'. But importantly for present purposes, the debate clearly demonstrates the Parliamentary intention that s 30 would only apply if an employee to had a reasonable explanation of continuing employment.

16. Ultimately, it could be considered that the Shadow Attorney-General was vindicated, as 5 years later Parliament decided to define 'continuing employment'. That was done by the Industrial Relations Amendment (Fair Conditions) Act 2005, and the clause notes of the relevant provision again reflect that s 30(3) establishes a threshold criteria:

> "continuing employment" - this is a new definition. This Section of the rincipal Act establishes criteria applying to disputes relating to the termination of employment of an employee who "…has a reasonable expectation of continuing employment…".
>
> The new definition removes argument about exactly what constitutes "continuing employment" by providing that it means employment that can be either continuing or indefinite, but which does not have an express or implied termination date.

17. As submitted above, there would have been little reason to confine the meaning of continuing employment if s 30(6) created a totally separate basis for finding unfair dismissal which was available regardless of a reasonable expectation of continuing employment."

[16] The Respondent finally submits that *Prasad* should not be followed on the basis that the Full Bench misapprehended the effect of *Port of Devonport Authority v Abey* noting that the Full Bench did not have the benefit of submissions on the issue of a residual jurisdiction to deal with matters on the basis that there may be unfairness even where there was no reasonable expectation of ongoing employment.

The Applicants Submissions

[17] The Applicant adopts what I have set out above regarding the true nature of the jurisdiction of the Commission in respect to unfair dismissal matters. She notes that she is a former employee as defined by the Act, that the subject matter of the Application namely unfair dismissal is an industrial matter and that there is a dispute about the industrial matter. Accordingly the Applicant submits that I have jurisdiction to deal with the matter. I agree with that.

[18] In respect to the construction question whether or not an employee must have a reasonable expectation of continuing employment the Applicant analyses s 30 of the Act as follows[5]:

> "(h) Section 30(1) provides for a specific definition of both "employee" and "continuing employment" which applies in that section.
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> (i) The Applicant meets the definition of "employee" set out in section 30(1) – the definition is cast as wide as possible to ensure that all employees are included and able to have an application heard in the Commission. This is consistent with the Commission's duty under act according to equity and good conscience, and to do such things appear to be right and proper to settle disputes.
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> (j) Subsection 2 does not simply mandate a fair approach. It also obliges the Commission to ensure that all of the circumstances of the case are fully taken into account. Subsection 2 expressly applies to "employees", which has a specific definition for the section – not just employees with a reasonable expectation of continuing employment.
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> (k) Subsection 3 prohibits the termination of certain employees (i.e., those with a reasonable expectation of continuing employment) unless there is a valid reason relating to conduct, capacity or performance, or operational requirements, to do so.
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> (l) The Respondent then urges, in summary, that the Commission read the phrase "employment" as if it read "*employment of an employee who has a reasonable expectation of continuing employment*" where that word appears in ss 30(3) – (13). This submission ought to be rejected.
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> (m) Despite the Respondent's submissions, there are numerous references in section 30 (3) – (13) to "employee", which must be taken to include all employees who meet the definition provided for by that section. Parliament has:
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> > (i) Defined "employee" and "continuing employment" separately within section 30;
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> > (ii) combined the two phrases only in s30(3),
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> > (iii) only used "employee" or "employment" in other subsections. This must be taken to have been intentional.
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> (n) Had Parliament intended the phrases then to be read together in section 30(3) – (13) (as urged by the Respondent), it would have done so.
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> (o) While an Employer is prohibited from terminating the employment of an employee who has a reasonable expectation of continuing employment (as defined) without a valid reason , this does not mean that other "employees" (as defined for the purpose of s30) are precluded from applying for (or receiving) an unfair dismissal remedy if, when all of the circumstances of the case are considered, the employee discharges their onus of proving that the termination was unfair.

[5] Applicants submissions paragraphs 3.2 (h) – (v)

(p) Thus, it is wrong for the Respondent to say that "if a valid reason exists, then it is for the employer to provide that the outcome of the termination was not unfair in all the circumstances". It may be true that in cases of an employee with a reasonable expectation of continuing employment, the absence of a valid reason for termination may be central – indeed, in some cases, it may be the only thing an employee need show to discharge the onus - but this does not shift the ultimate onus which remains on the employee pursuant to s(30)(6).

(q) The Respondent's submission conflates the prohibition on termination of employees with a "reasonable expectation of continuing employment" without a valid reason with the applicant's onus (under subsection 6) of proving "unfairness" in a given hearing.

(r) Moreover, the Respondent's submission is contrary to both:

(i) subsection 2, which requires all the circumstances of the case the be considered – not just whether the employee had a reasonable expectation of continuing employment as a 'preliminary matter' or whether there was a valid reason relating to conduct capacity or performance or operational requirements; and

(ii) subsection 6, which expressly provides that the onus is on the applicant to prove unfairness.

(s) Contrary to the Respondent's submission, s30(6) does not need to establish a "separate jurisdiction" to bring the application because jurisdiction is already established under other sections of the IR Act, as detailed above.

(t) Indeed, the Respondent concedes that subsection refers to "employment" and not "employment of an employee with a reasonable expectation of continuing employment". Again, this must be taken to be intentional. It makes sense that s30(6) refers to the "applicant" rather than the "employee", because both "employees" and "former employees" can bring an application in the Commission in relation to termination of employment.

(u) There is no warrant to read into the words of those subsections as limiting their application just to those employees (as defined under section 30) who have a reasonable expectation of "continuing employment". There is no warrant to do so, and to do so is contrary to the plain ordinary words of the section. Doing so would impermissibly restrict the operation of the section contrary to its clear language. Had parliament intended that to be the case, it would have said so.

(v) Given the clear language, Parliament must be taken to have intended that to be the result."

Consideration.

[19] Section 30 provides as follows:

30. Criteria applying to disputes relating to termination of employment

Continuing employment means employment that is of a continuing or indefinite nature or for which there is no expressed or implied end date to the contract of employment;

E*mployee* means a person who is or was engaged to work casual employment, part-time employment, full-time employment or probationary employment and includes a former employee;

relationship status means the status of being, or having been, in a personal relationship, within the meaning of the Relationships Act 2003 .

(2) In considering an application in respect of termination of employment, the Commission must ensure that fair consideration is accorded to both the employer and employee concerned and that all of the circumstances of the case are fully taken into account.

(3) The employment of an employee who has a reasonable expectation of continuing employment must not be terminated unless there is a valid reason for the termination connected with –

(a) the capacity, performance or conduct of the employee; or

(b) the operational requirements of the employer's business.

(4) Without limitation, the following are not valid reasons for termination of employment:

(a) membership of a trade union or participation, or involvement, in trade union activities;

(b) seeking office as, acting as, or having acted as, a representative of employees;

(c) non-membership of a trade union;

(d) race, colour, gender, sexual preference, age, physical or intellectual disability, marital status, relationship status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, except where the inherent nature of the work precludes employment for any of those reasons;
(e) absence from work during maternity or parental leave;

(f) temporary absence from work because of illness or injury, provided that nothing in this paragraph is to be construed as removing an employer's right to terminate an employee's employment on account of persistent or unjustified absenteeism;

(g) the filing of a complaint, or the participation in proceedings, against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities.

(5) Where an employer terminates an employee’s employment, the onus of proving the existence of a valid reason for the termination rests with the employer.

(6) Where an applicant alleges that his or her employment has been unfairly terminated, the onus of proving that the termination was unfair rests with the applicant.

(7) The employment of an employee must not be terminated for reasons related to the employee’s conduct, capacity or performance unless he or she is

informed of those reasons and given an opportunity to respond to them, unless in all the circumstances the employer cannot reasonably be expected to provide such an opportunity.

(8) An employee responding to an employer under subsection (7) is to be offered the opportunity to be assisted by another person of the employee's choice.

(9) The principal remedy in a dispute in which the Commission finds that an employee's employment has been unfairly terminated is an order for reinstatement of the employee to the job he or she held immediately before the termination of employment or, if the Commission is of the opinion that it is appropriate in all the circumstances of the case, an order for re-employment of the employee to that job.

(10) The Commission may order compensation, instead of reinstatement or re-employment, to be paid to an employee who the Commission finds to have been unfairly dismissed only if, in the Commission's opinion, reinstatement or re-employment is impracticable.

(11) In determining the amount of compensation under subsection (10) , the Commission must have regard to all the circumstances of the case, including the following:

(a) the length of the employee's service with the employer;

(b) the remuneration that the employee would have received, or would have been likely to receive, if the employee's employment had not been terminated;

(c) any other matter the Commission considers relevant.

(12) Where the Commission finds that an employee's employment has been unfairly terminated and has determined that reinstatement or re-employment is impracticable, any amount of compensation must not exceed an amount equivalent to 6 months' ordinary pay for that employee.

(13) The Commission is to take into account any efforts of the employee to mitigate the loss suffered as a result of the termination of his or her employment."

[20] In essence the Applicant submits that there is a distinction between "employee" as defined in section 30 and an 'employee who has a reasonable expectation of continuing employment' (conjunctive expression). She submits that as the conjunctive expression is only used in subsection 3 and the word 'employee" and "employment" is used elsewhere there is a clear statutory intention that they mean different things to the conjunctive expression.

[21] The Respondent submits that subsection 3 creates a threshold criteria for disputes relating to termination of employment, "so in all the subsections that follow, the term 'the employment' essentially becomes shorthand for "the employment of an employee who has a reasonable expectation of continuing employment"[6]. The effect of this submission is that the Respondent is asking me to read words into the provision which are not there. It is informative to consider the question as if I am being asked to imply those words into the provision.

[6] Respondents submissions par 8

[22] In Australia the following test has been adopted:

> "First, the court must know the mischief with which the Act is dealing. Secondly, the court must be satisfied that by inadvertence Parliament has overlooked the eventuality which must be dealt with if the purpose of the Act is to be achieved. Thirdly, the court must be able to state with certainty what words Parliament would have used to overcome the omission if its attention had been drawn to the defect".[7]

[23] However even where all the preconditions are met implication of the words does not automatically follow. Rather if one of the preconditions is not met then the words are not implied. If they are further considerations apply[8].

[24] One of those considerations is that the words sought to be implied cannot read up, in the sense of expanding the sphere of operation of the provision.[9]

[25] Further where words are sought to be implied which go further than correcting simple grammatical drafting errors (which if uncorrected would defeat the object of the legislation) then implication is less likely. Where the words sought to be implied fill a gap in the legislation or the insertion is a large one, implication is less likely.[10] Where the target of the legislation has been missed it will usually be for the parliament to remedy the deficiency.[11]

[26] In my view the implications of the words would read up or increase the sphere of operation in that the words sought to be implied will increase the sphere of the limitation.

[27] The question is also begged, why would I not read 'employment' as meaning "continuing employment" as defined. Obviously where there is a defined word or phrase in an act, that phrase is to be repeated if the definition is to be invoked. The defined term has not been used other than is subsection 3. It could have been. The Respondents argument may be seen to be a way around this difficulty, a difficulty parliament created if the meaning of the section is to be that advanced by the Respondent. However if 'employment' is to be given its natural and ordinary meaning no such difficulty of construction arises.

[28] Further the Respondent submits that subsection 6 which provides that the onus of establishing that the termination of employment was unfair is a procedural provision. I agree. However I note that the use of the word 'unfair' in this section is the first time that word is used in s 29 or 30.

[29] Section 29 of the Act creates jurisdiction in respect to 'termination' and does not refer to 'unfair' termination. Section 3 of the Act in respect to "industrial matter" refers to the reinstatement or re-employment of an employee or a former employee *who has been* unfairly dismissed. The termination of the employment itself as defined in "industrial matter" does not refer to unfair termination. Accordingly the first time unfairness is introduced as an issue for consider in respect to the validity of a termination is in subsection 6. Accordingly I find that while subsection 6 is procedural, it does more than that. It introduces the criteria of unfairness as a consideration as to whether a termination is valid for the first time.

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[7] Bermingham v Corrective Services Commission of New South Wales (1988) 15 NSWLR 292 at 302
[8] R v Young [1999] NSWCA 166
[9] R v PLV [2001] NSWCA 282 per Spigelman CJ at 89-90
[10] Taylor v Owners Strata Plan No 11564 [2014] HCA 9
[11] See for example Marshall v Watson (1972) 124 CLR 640

[30] As regards the reference to unfairly terminated or dismissed in subsections 9 and following, that is explicable because the industrial matter as defined by section 3, once the issue of the validity of the termination has been dealt with, is reinstatement of reemployment of the employment of an employee who has been unfairly dismissed.

[31] Having introduced the consideration of unfairness for the first time as a criteria for validity of termination of employment, the absence of the conjunctive phrase to describe the employment is significant. The conjunctive phrase is used in respect to the criteria of valid reason. If it was a requirement for the criteria of unfairness then I would have expected parliament to have made that clear.

[32] I note that the purpose and object of this part of the legislation is remedial. As such there is no reason to read down the provisions or make criteria subject to limitations which are not expressed.

[33] Having regard to the matters above I do not think that I am justified in construing the section as if the definition of "continuing employment' appeared wherever the word "employment appears.

[34] Whilst the extrinsic material relied on by the Respondent may suggest that parliament intended to require the definition of 'continuing employment' to apply as a gateway requirement to access a remedy for the termination of employment the words of the legislation are the words to be construed. As the High Court notes from time to time in special leave applications, it is often the case that the extrinsic materials such as clause notes and second reading speeches bear no resemblance to the words chosen to be used. In my view the extrinsic materials do not confirm the interpretation conveyed by the ordinary meaning of the provision.

Conclusion – construction

[35] I determine that s 30 of the Act does not require there to be continuing employment, as defined, in order for an employee to make an application for an unfair dismissal remedy. Had parliament intended for 'continuing employment' as defined to limit 'employment' wherever it appears in section 30 then it should have done so. The section contains only one subsection where 'employment' is so defined. It would have been a simple matter for parliament to use the additional words, to use the phrase 'continuing employment' as defined or to define employment throughout as being of a continuing nature. It has not done that. As I have set out above I do not think it is permissible to read the words in to limit the meaning of "employment" wherever it appears on the section.

[36] To read in a whole phrase to limit the ordinary and natural meaning of the word 'employment' is not a small thing. I do not find that circumstances exist which justify such a course.

The nature of the orders sought

[37] The Respondent submits that he Commission does not have power to make the orders sought. Its submissions are brief. It submits that to grant the order would be to require a new appointment in breach of the provisions of the *State Service Act 2000* and Employment Direction 1.

[38] The Applicant submits that the legislation provides for reinstatement of reemployment to a 'job'. That is to the tasks which the employee was doing immediately prior to the dismissal. She submits that the issues advanced by the Respondent do not arise.

[39] I am not prepared to terminate the proceedings in a summary way on this basis. It is at least arguable that if the termination was determined to be unfair an order could be to place the Applicant back into the framework of her IOA. Assuming the IOA was put in place in accordance with legislation then there may be no impediment to doing so. This is not a case where the IOA has expired. The Respondents submissions may have significantly more weight if that were the case.

Outcome

[40] I determine that the Commission may hear and determine the matter. Section 30 does not limit employment to continuing employment as defined save in respect to the issue of valid reason.

[41] Further there are orders which the Commission could potentially make if the Applicant were successful in establishing that the dismissal was unfair. I am not prepared to exercise my discretion under s 21(2)(c)(4) of the Act in respect to this issue at this stage.

Decided on the papers