



## SHORT TERM CONTRACTS OF EMPLOYMENT

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Short term contracts of employment, sometimes called fixed term contracts, are fairly common in The Bahamas. The existence of such contracts, however, can bring about uncertainty in some situations. Take for example an employee who decides, at the end of a series of successive short term contracts, to make a claim for redundancy pay or severance pay on the basis that she was continuously employed until the expiration of the last of her short term contracts. The outcome of such a claim is often uncertain. Each case will turn on its own facts and circumstances.

Section 26 of the Employment Act, Chap. 321A of the Commonwealth of the Bahamas (the "Act") provides for redundancy and pay in respect thereof. Section 29 of the Act pertains to severance pay on termination of employment. Whether a person employed under fixed term contracts is entitled to severance pay and/ or redundancy pay on termination will depend on whether that person is considered to be continuously employed for the purposes of the Act.

In two cases pertaining to short term contracts, one of them recent and the other a little older, the Industrial Tribunal of The Bahamas considered whether or not such contracts amounted to continuous employment of each of the claimants from the commencement of the first contract through the expiration and

non-renewal of the final contract. The Tribunal concluded in the older case that the claimant was not continuously employed, but in the more recent case it decided that the claimant was continuously employed.

In the older of the two cases, namely, the case of *Bancroft Thompson v Lyford Cay School*, Case No. 865 of 2005 ("Thompson case"), the Applicant, Bancroft Thompson, had been employed as a caretaker since 1 September 1992 under a series of written contracts. In 1997 he was promoted to Maintenance Manager and given a fixed term contract for two years. At the expiration of that contract Mr. Thompson was given a further contract for two years on the same terms, at the end of which he was given a final written contract for one year. When the final contract expired, Mr. Thompson continued working without a written contract until 18 June 2004. Upon termination of employment he was paid two months' salary in lieu of notice. Mr. Thompson claimed under Section 26 of the Act that he was entitled to redundancy pay for the time he had been employed by the school.

Mr. Thompson's counsel submitted that the series of fixed term contracts with no breaks or change of employer constituted continuous employment. The Tribunal disagreed. It held that the written contracts were separate from and

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independent of one another and did not form part of a single composite whole; as a result Mr. Thompson was not entitled to severance pay. The Court of Appeal unanimously upheld the decision of the Tribunal.

The second of the cases referred to is *Margo Albury v. St. Andrew's School Limited, Case No. 1370 of 2009* ("Albury case"). Margo Albury had been engaged by the school by virtue of a series of six successive fixed term contracts. Before the end of the final contract, the Principal advised Ms. Albury that her contract would not be renewed. Ms. Albury claimed that she had been continuously employed and that her job had been made redundant, but that upon termination of her contract she had not been paid redundancy pay or proper severance pay.

In its decision the Tribunal set out the nature of the fixed term contracts. After due consideration of the evidence, the Tribunal held that it was satisfied that Ms. Albury must be deemed to have been employed under a "global contract of employment" notwithstanding the purported individual and successive fixed term contracts. Further, the Tribunal held that, in the circumstances, Margo Albury was entitled to redundancy pay in accordance with Section 26 of the Act.

On appeal by the school, the Court of Appeal upheld the Tribunal's decision that Ms. Albury had been continuously employed for the period represented by

the totality of her short term contracts and was entitled to redundancy pay. Conteh, J.A., after stating that the court was "satisfied and convinced that the Tribunal was on the point, both on the facts and the law, to find that the respondent was made redundant", cited with approval the remarks of Osadabey, J.A. in the *Thompson Case*, where he stated:

*"This court is not a court of trial, unfortunately. The tribunal is vested with the exclusive jurisdiction to make decisions on fact. An appeal is only allowed on a point of law. Because of this situation, we are unable to reverse the findings of the tribunal as they stand at the moment, notwithstanding our regret that the tribunal ought perhaps to have done more than it did. In spite of legal authorities, each case depends on its own facts. The final determination of the case will depend on the facts as found by the tribunal."*

Osadabey J.A.'s remarks should not be taken lightly. Each case turns on its own facts. Attorneys should draft short term contracts carefully, and employers should be made aware of the possible outcome of a claim for redundancy pay or severance pay by a person who was employed under a series of short term contracts.

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