

EMPLOYMENT APPEALS TRIBUNAL

Claim Of:
Employee

Case No.
UD1261/2005
MN942/2005

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001 MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr L. Ó Catháin
Members: Ms M. Sweeney
Mr J. McDonnell

heard this claim at Waterford on 12th February 2007

Representation:

Claimant: Mr. Derek Dunne BL instructed by Mr. David Burke,
David Burke & Co., Solicitors, 24 Mary Street, Dungarvan, Co. Waterford

Respondent: Mr. Conor O'Connell, Construction Industry Federation,
Construction House, 4 Eastgate Avenue, Little Island, Cork

The determination of the Tribunal was as follows:

Respondent's Case:

Mr. S held the position of Contracts Director between 2003 and 2005. Mr. S was aware the claimant worked on site. In December 2004 the claimant was working for the groundwork crew. An instance occurred between the claimant and a driver on site. As a result of this Mr. S met with the Site Manager and the claimant. The claimant was given the option of working on another site where the respondent was building a large shopping centre. The claimant was delighted with the opportunity and started work on the new site. The respondent employed two other ground workers in the months following the meeting with the claimant. Both of the new employees had more pipe laying experience than the claimant. Mr. S deals with almost all disciplinary matters.

The shopping centre site was in Dungarvan. The building projects at the site included a cinema, shops and a housing development. The site was divided into blocks A – F. The projects were run at the same time and were all coming to completion. The Contracts Managers held meetings once every three weeks. The Contracts Managers had flagged three weeks before the 15 July 2005 that they would need to examine the possibility of redundancies. Fifteen employees were made redundant on the 15 July 2005 including a number of general operatives and a carpenter. The skill sets of the employees were examined in order to select the employees for redundancy. The company was also mindful of any work the company had and the skill sets needed to carry out that work.

The claimant was a Grade C general operative as outlined in the Construction Industry Federation's agreed rates of pay. Grade A's hold tickets, Grade B's have a ticket but it may not be valid and Grade C's are general operatives with general duties such as cleaning on site etcetera. As the projects at the shopping centre were coming to completion no other employees were hired.

Mr. S met the claimant on site either the week before the claimant was given notice or the week the claimant was given notice. Mr. S told the claimant he was unaware that he was one of the employees selected for redundancy and that the redundancies were as a result of a downturn in business. The claimant did not inquire from Mr. S about alternative work. A list of the company's employees was opened to the Tribunal. Mr. S stated he did not know everyone on the list but he knew most of them. The employees not selected for redundancy were kept in the company's employment because of their skill sets.

During cross-examination Mr. S was questioned regarding certain employees that were not selected for redundancy. Mr. S stated that these employees either had similar skill sets to the claimant but were based on a different site or they were different grades or had different skills sets than the claimant and were needed by the company for remaining work such as snagging and carpentry.

By July 2005 the Cineplex project had been completed. The client (which is a separate company than the respondent but has common shareholders) had not decided if they wished to convert the top two floors to office blocks or apartments. The work on that project was completed with the exception of the top floors by July 2005. The work on the top floors has only started recently.

Mr. S spoke with Mr. P about selecting employees for redundancy. As far as Mr. S was aware there were no discussions with staff to put them on notice of the possibility of redundancies. Mr. S was sure the employees selected for redundancy were given two weeks notice.

The company would have considered re-deployment if the work was there to do that. The claimant did not contact Mr. S about work after he was made redundant. It was put to Mr. S that the claimant had sent him a letter requesting work. Mr. S replied that he never saw the letter. There were no discussions with staff before the redundancies because of the type of industry the company is in.

It was put to Mr. S that the company had hired Grade C employees after the claimant was made redundant. The employees were on site in Thurles. They were hired two months after the claimant as the company received additional work in September 2005. Mr. S stated that the company had no problem giving work to the claimant but he had never contacted them. Mr. S denied the company had acted too quickly making the claimant redundant. The company could not have continued to pay fifteen employees for two months while they waited to receive new work. The company's turnover had dropped from 63 million euro in 2004 to 52 million euro in 2006. Mr. S could not recall the turnover for 2005. The company try not to move resources between sites because it can cause a loss in productivity. The company only swapped staff between the projects on the shopping centre site.

Mr. S stated that normally in the building industry verbal notice is given rather than written notice. It was put to Mr. S that the claimant had contacted Mr. S after he was made redundant regarding his bonus and notice pay. Mr. S replied that the head office of the company deals with minimum notice.

Answering questions from the Tribunal Mr. S stated that when the company were employing

people again in September the company did not contact the claimant with an offer of work for two reasons. The first reason was because the work was in Thurles and not in Dungarvan. The second reason was that it was not standard practice for the company to phone people with an offer of work. The usual thing was that people would contact the company themselves seeking work.

The claimant and a fellow employee were the only employees selected for redundancy who had commenced their employment with the company in 2003. All of the other employees selected for redundancy commenced employment with the company after 2003. Other Grade C's were not selected for redundancy because of their skill sets.

Mr. P giving evidence told the Tribunal that he started working on the shopping centre site in March 2005. Block A and B were near completion at that time. Two months later block A, B and E were completed. The only work remaining was a mixed-use building. This was only a shell of a building, as the client had not yet decided what purpose they wanted the building to have. Work only started on this in January or February 2006. Between July 2005 and January 2006 the company was working on only one site in Dungarvan and this site required very few employees.

In July 2005 Mr. P had a meeting with Mr. C as the company needed to make staff reductions due to a lack of work. Mr. C asked Mr. P to select people for redundancy. Mr. P did so in consultation with the foreman. Mr. P could not recall whether he or the foreman gave notice to the employees but verbal notice was given to fifteen employees before the date they finished work.

When they were made redundant the claimant and a colleague went into Mr. P's office and made representations for themselves. Mr. P explained the situation to them as best he could. The claimant did not contact Mr. P looking for work after this. Mr. P could not recall if he had seen a letter from the claimant seeking work. The claimant did look for a reference and Mr. P had no problem giving the claimant a reference.

During cross-examination Mr. P stated notice was usually given verbally. It was put to Mr. P that the employees were not consulted with prior to being given notice of their redundancies. Mr. P stated it would be uncommon in the building industry to consult with employees prior to impending redundancies. Mr. P was unaware the claimant's colleague who was also made redundant was subsequently offered a job following an advertisement.

When Mr. P and the foreman were selecting employees for redundancy the foreman made suggestions about the skill sets the company needed. Mr. P made the final decision on who was to be selected for redundancy. The following process was used when selecting the employees for redundancy. The employees were considered in relation to their skill set. They also considered the skills needed to finish the remaining work the company had. The claimant's skill set did not meet the requirements. Some of the employees that were not selected for redundancy had fireproofing skills and had been trained specifically to do this. Mr. P did not think the claimant had that training. The claimant's responsibilities included excavation of trenches and cleaning of the site. A lot of the remaining work on site was snagging and fire proofing.

The claimant was not hired for the work in Thurles because it was too far from Dungarvan. It was not Mr. P's remit to hire employees for the Thurles site. He would not even have been aware of positions available in Thurles. Mr. P stated he may or may not have received a letter from the claimant requesting work. Mr. P receives a lot of letters. It was put to Mr. P that the engineer on site had been the person to tell the claimant he was made redundant. Mr. P replied, "...that may be true. I was not around on that day."

Answering questions from the Tribunal Mr. P stated the volume of work has not been the same for the company since 2005. A crane driver (who was made redundant at the same time, as the claimant) is the only person that has been re-hired since the time of the redundancies. The employees were not officially informed of the redundancies. They were given two weeks notice.

Claimant's Case:

The claimant started work with the company in 2003 as a grounds worker. He was moved onto the shopping centre site and did grounds work there as well as working with bricklayers and other duties. A number of employees had the same duties as he did.

The claimant was working on site with an engineer. The engineer received a phone call around 4pm. The engineer had been asked by the Mr. P to tell the claimant that he was being made redundant. The claimant did not receive notice. The claimant could not recall what date it was but believed it to be a date before his employment ended. There were three Polish employees hired after he was made redundant.

The claimant stated he would not have known Mr. P and vice versa. The claimant wrote a letter to the company seeking work after he was made redundant. He received no response to his letter. The claimant established loss for the Tribunal.

During cross-examination the claimant accepted he had received a good reference from the company. It was put to the claimant that certain employees in the company had certain skills. The claimant was not aware that any of the employees listed had these skills. Answering questions from the Tribunal the claimant confirmed he received one week's wages and his holiday money at the time of his redundancy. He did not get his summer bonus.

Determination:

The Tribunal is of the view that the evidence was not as clear as it could be by the respondent but nevertheless the Tribunal finds on balance that the claimant was not unfairly dismissed. Thus the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

The Tribunal is of the view that not enough evidence was adduced to prove that minimum notice has been paid. The Tribunal awards the claimant the sum of €628.72 (being one week's gross wage) under the Minimum Notice and Terms of Employment, 1973 to 2001.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)

