

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM(S) OF:

CASE NO.

Employee

UD1097/2006

Against

Employer

under

### UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr M. O'Connell B.L.

Members: Mr M. Noone  
Mr. P. Woods

heard this claim at Dublin on 14th March 2007

Representation:

\_\_\_\_\_

Claimant(s): The claimant in person

Respondent(s): XXXX

The determination of the Tribunal was as follows:-

### Respondent's Case

The MD of the respondent company told the Tribunal that the claimant was employed as a plumber. The claimant held the position of foreman seven to eight months after he was employed. The MD relayed an occasion when the contracts developer Mr. T K told the claimant to leave a site as a result of a dispute over a build up of issues. The claimant was a good employee and a good timekeeper. The claimant had a good working relationship with his colleagues and as a foreman he oversaw work. The claimant tended to get hot headed and he walked off the site three times. If the respondent had to let an employee go it contacted other companies to establish if they could take on its employees. The claimant was advised he was being let go and that there was a position for him in another company. The claimant was informed that the respondent was hopeful of securing future work and as soon as its workload increased the claimant would be re-employed. The claimant had an issue with a Polish employee who was employed as a chargehand. The chargehand undertook a different function than that of the claimant.

In cross examination the MD stated that in August he advised the foreman DK to tell employees that whenever work came on stream that they would be re-employed and three employees returned. The MD made contributions to the claimant's pension. He stated that Polish employees were

treated very fairly and Irish and Polish workers were paid according to their experience.

### **Claimant's Case**

The claimant told the Tribunal that he commenced employment as a plumber with the respondent company and was then assigned to a position of foreman. He was transferred from a site in Clonee and he stated that it was not due to a personality clash. The claimant admitted that he became hot and bothered and sometimes the best thing to do was to walk away and return after he had calmed down. The claimant was not interested in what his colleagues earned and he stated that Polish workers were paid less than other employees. The claimant was supposed to be a senior member of staff and whenever the MD came on site he spoke directly to the chargehand. The claimant did not employ or dismiss staff. The claimant stated that the charge hand dismissed an employee. The claimant undertook quality control and he endeavoured to resolve problems before they developed.

The claimant spent forty per cent of his time undertaking foreman duties. When the claimant asked the MD why he was let go and why a Polish foreman was retained the MD told him that the Polish foreman was employed as a charge hand. The charge hand looked after the Polish workers and the claimant asked the MD was it due to the fact that he did not speak polish that he was not retained. The claimant stated that he sought alternative work three weeks before he was let go. After he was let go he was unemployed for a week. When he was employed as supervisor with the respondent he was informed by D K (a foreman) that he would get a bonus at Christmas and holidays. He was informed that he would be in charge of other sites.

The claimant stated that there was a difficulty with his pension contributions. To enable the claimant to claim benefit he had to have made thirteen pension contributions. There was still a dispute over his pension and he approached the MD on numerous occasions about this matter.

### **Determination**

The claimant was employed in the construction industry, which is inherently cyclical in relation to stability of employment. The respondent claimed that the claimant was let go pending completion of a number of contracts and the claimant was told that work would be available when the contracts came on stream. This version of events was not contradicted by the claimant to the satisfaction of the Tribunal. The claimant admitted that he sought employment three weeks before receiving notice of his dismissal. Accordingly his claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

(Sgd.) \_\_\_\_\_  
(CHAIRMAN)

