

## EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:  
Employee

CASE NO.  
UD85/2006

Against

Employer

under

### **UNFAIR DISMISSALS ACTS, 1977 TO 2001**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Ms. K. T. O' Mahony B.L.

Members: Ms M. Sweeney  
Mr K. O'Connor

heard this claim at Killarney on 13th March 2007

### **Representation:**

Claimant : Terence F. Casey & Co, Solicitors, 99 College Street, Killarney, Co. Kerry

Respondent : Barry, Turnbull & Co., Solicitors, 33/34 Washington Street West, Cork

The determination of the Tribunal was as follows:

### **Respondent's Case**

The contracts manager for this construction enterprise detailed the background to the claimant's termination of employment with the respondent in November 2005. The claimant commenced employment with the company in October 2004 and worked as a general operative on a site in Killarney where the respondent was building apartments, retail outlets and offices. About 15 of the respondent's employees were employed on that site at the peak of the work and 4 of those, including the claimant, were general operatives. At that time there were about 65 workers on the site in all and apart from the respondent's 15 employees, the others worked for sub-contractors. The claimant's place of work was mainly on this building site itself but he spent a couple of weeks working in the respondent's storage yard, about ten minutes drive away from the building site. Up to March 2005 the claimant had been issued with three verbal warnings. The respondent received a letter from the claimant dated 9 September 2005 in which he alleged that he and some non-national labourers were being bullied and harassed by the witness. The respondent investigated these allegations. The witness sent his response to the allegations to the respondent. Following an investigation by the company, the respondent wrote to the claimant on 29 September 2005 rejecting the allegations. The claimant continued working without further complaint or incident until November 2005.

The respondent was handing over the apartments in mid-December 2005 and the work was winding down on the site in November. The project manager wrote to the claimant on 3 November 2005 notifying him that the respondent could no longer offer him continued employment and giving him one week's notice. In this letter the project manager also informed the claimant that his details would be kept on file and that he would be contacted if a suitable vacancy arose. There was a possibility that the respondent would re-employ the claimant again in the spring of 2006 if work became available. Around this time the number working on the site reduced from 65 to 25, which included those employed by the sub-contractors. Four other employees were let go around the same time as the claimant, one of whom was a general operative and he was let go three weeks earlier than the claimant. The respondent did not have any general operatives from his company on the site after 11 November 2005. With the aid of a schedule/chart the contracts manager demonstrated to the Tribunal the different categories of workers employed by the respondent and the sites on which they worked from January 2005. The site in Killorglin, some twenty-two kilometres from Killarney, was also nearing completion in December 2005.

The witness was adamant that the respondent did not employ non-national labourers directly. A large number of sub-contractors were engaged in various jobs connected with the Killarney site and it was possible that some of these employed non-nationals. The witness could not comment on the claimant's assertion that he worked on the managing director's private site. The contracts manager did not organise the work for the workers on the Killarney site.

### **Claimant's Case**

The claimant worked as a labourer for the respondent in the Killarney area. He worked on two different but connected sites. Among his colleagues were non-national labourers who took their instructions from the respondent and received their wages from the respondent. At times the claimant drove them between sites. He worked with some of them on the Managing Director's residence. He was satisfied those non-national nationals were employees of the respondent. He and non-national(s) also worked in the storage yard for a few weeks.

The claimant wrote to his employer in September 2005 complaining about the way in which the contracts manager was treating the Polish workers. He also alleged wrongdoing on the part of the contracts manager towards him: telling him that he was useless and could be replaced. The claimant was not asked to participate in any investigation. The respondent informed him that he did not find in his favour following its investigation into his complaints. Following that episode the claimant felt he was isolated and generally ignored on the building site by the respondent. However he worked away there until he received a letter from the respondent informing him of his imminent redundancy.

It was the claimant's contention that he was unfairly selected for redundancy due to his earlier complaints against the company. In addition he believed that non-national labourers who started later than he were kept on for other sites. He added that those workers were being transported to Killorglin from Killarney to work on the site there. The witness felt this to be unfair as he lived in Killorglin and was available to work there but was not selected to do so by the respondent. He added that non-nationals were working on the Killarney site before sub-contractors arrived there.

## **Determination**

The claimant's complaint in September 2005 was not the reason for his dismissal. The respondent's contract was nearing completion in November 2005 and a redundancy situation existed. The Tribunal is satisfied that the claimant's job was redundant in early November 2005 and that no general operatives continued to work either on the site in Killarney or Killorglin after early November 2005. It accepts on the balance of probability that the non-national labourers who continued on after the claimant's redundancy were working for the sub-contractors and not the respondent. Accordingly, the claim under the Unfair Dismissals Acts, 1977 to 2001 fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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

