

EMPLOYMENT APPEALS TRIBUNAL

Claim Of:
Employee

Case No.
UD288/2007

against
Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mrs. M. Quinlan
Members: Mr. J. Reid
Ms. E. Brezina

heard this claim at Dublin on 6th July 2007

Representation:

Claimant: In person

Respondent: Mr. Marcus Dowling B.L., instructed by Ms. Elaine Kelly, BCM Hanby
Wallace, Solicitors, 88 Harcourt Street, Dublin 2

The determination of the Tribunal was as follows:

Respondent's Case:

Giving evidence the Group Secretary told the Tribunal that the respondent builds residential housing. The claimant commenced employment with the respondent in 1996. The claimant worked as a general operative and his duties consisted of external housing work and some internal housing work. Throughout the course of his employment the claimant worked on a number of developments.

During February 2007 the claimant was working at site X. Site X was developed through two separate phases. The claimant was based on phase one, which had commenced in June 2004. Phase two commenced approximately twelve to eighteen months later. The claimant worked on phase two occasionally. Work ceased on phase one in March 2007. Phase two is due for completion in August 2007.

A document containing a list of employees who had been made redundant was opened to the Tribunal. The claimant's name was on this list. The claimant's employment ended on the 23 March 2007. When phase one was complete it was not practical to transfer the claimant to another of the respondent's sites as his knowledge was of site X. Also, most of the respondent's other work had ceased at this time. The respondent selects employees for redundancy on a site-by-site basis. The claimant was paid redundancy and his minimum notice entitlements.

During cross-examination the witness stated that the staff working in phase one was different from

the staff working in phase two. Phase two was fully staffed by the time the claimant was made redundant.

Answering questions from the Tribunal the witness stated that to his knowledge none of the staff working in phase one were transferred to phase two. At the time the claimant was made redundant, a total of twelve people were selected for redundancy. Since 2006 the respondent has made approximately eighty employees redundant. The respondent assesses redundancies on a site-by-site basis rather than on length of service. The respondent does not operate a “last in first out” selection process for redundancies. The claimant accepted a redundancy payment. Other employees with less service than the claimant were not selected for redundancy, as they were part of the staff working on phase two. There was no vacancy for the claimant in phase two when phase one had been completed.

Giving evidence the Site Manager stated the claimant worked on phase two for a day or two occasionally but not on a permanent basis. The claimant was to work on phase two if someone was absent. The claimant was working on phase one for the last six weeks of his employment.

Claimant's Case:

The claimant could not understand why he was made redundant when ten people remained in the respondent's employment after he was made redundant. These ten employees had worked with the claimant on phase one of site X. The claimant was working on phase two before the ten individuals were. Originally, the claimant refused the redundancy payment but the foreman told him he had to accept it, as he had no other option.

During cross-examination the claimant stated that he worked between phase one and two. The claimant confirmed that phase one was closing down in March 2007.

Answering questions from the Tribunal the claimant stated during his time working on site X he was occasionally moved from phase one to phase two. Near the end of his employment he worked for two or three months permanently on phase two.

Determination:

From the evidence furnished the Tribunal find that there was a genuine redundancy situation in relation to the claimant's employment. The respondent operated its redundancy procedure of selecting employees for redundancy on a site-by-site basis. The claimant was paid and accepted a redundancy lump sum payment. Therefore, the claim under the Unfair Dismissals Acts, 1977 to 2001, fails.

Sealed with the Seal of the

Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)