

EMPLOYMENT APPEALS TRIBUNAL

CLAIM OF:

CASE NO.

Employee

UD657/2006

against

Employer

under

UNFAIR DISMISSALS ACTS, 1977 TO 2001

I certify that the Tribunal
(Division of Tribunal)

Chairman: Mr. E. Murray

Members: Mr. G. Phelan
Dr. A. Clune

heard this claim at Limerick on 23 October 2007

Representation:

Claimant:

Mr. Andrew d'Arcy, Andrew d'Arcy & Co. Solicitors,
The Mill, Glentworth Street, Limerick

Respondent:

Managing Director and Accountant
of the respondent

The determination of the Tribunal was as follows:

The respondent is a building company that performs work on properties of its Managing Director (MD). The claimant was employed in July 2004 as a grade A operative. Whilst the claimant was not given a written contract of employment it is accepted that he performed duties such as plastering, skimming, carpentry, block laying. It is further accepted that whilst he was not a qualified tradesman he was capable of a high standard of work.

Throughout 2005 the respondent was involved in projects in Nenagh and Dublin with fourteen men employed in Nenagh and eight men employed in Dublin. The claimant worked on both the Nenagh and Dublin operations, spending some fifteen weeks in Dublin, including six weeks in October and November. In December 2005 work on the Nenagh project was nearing completion and a decision was taken to reduce the workforce from fourteen to six. Around this time a decision was taken to reduce the Dublin workforce from eight to four. The claimant was among those selected for redundancy from amongst the workers in Nenagh, his position was that he should have been kept on and a carpenter (AC) should have been selected for redundancy as the claimant was capable of doing the work AC did. AC is a qualified tradesman. The claimant's position was further that he should have been offered continuing work in Dublin where the respondent took a decision to use sub-contractors when work of the kind the claimant normally did became available.

Determination:

The Tribunal is satisfied that a genuine redundancy situation existed in the respondent. AC is a qualified tradesman and the claimant is not. Whilst the claimant is undoubtedly capable of delivering a high standard of work the Tribunal finds that the selection of the claimant for redundancy when considered against the non-selection of AC was not unfair. However the Tribunal is not satisfied that there was no suitable work for the claimant in Dublin. The claimant was willing to travel to Dublin, having recently done so, yet was not considered for any, however limited, work in Dublin. Accordingly the Tribunal finds that on these grounds the claimant was unfairly selected for redundancy. It follows that the dismissal was unfair and, having considered the limited amount of work remaining in Dublin, the Tribunal awards €5,000-00 under the Unfair Dismissals Acts, 1977 to 2001

Sealed with the Seal of the
Employment Appeals Tribunal

This _____

(Sgd.) _____
(CHAIRMAN)