

**EMPLOYMENT APPEALS TRIBUNAL**

CLAIM OF:

CASE NO.

Employee

UD273/2006  
MN153/2006  
RP109/2006  
WT86/2006

against

Employer

under

**UNFAIR DISMISSALS ACTS, 1977 TO 2001  
REDUNDANCY PAYMENTS ACTS, 1967 TO 2003  
MINIMUM NOTICE AND TERMS OF EMPLOYMENT ACTS, 1973 TO 2001  
ORGANISATION OF WORKING TIME ACT, 1997**

I certify that the Tribunal  
(Division of Tribunal)

Chairman: Mr. L. Ó'Catháin

Members: Mr. M. Forde  
Mr. T. Kennelly

heard this claim at Limerick on 17 May  
and 22 October 2007

Representation:

Claimant:

Mr. Dermot G. O'Donovan, Dermot G. O'Donovan & Partners, Solicitors,  
Riverpoint, Lower Mallow Street, Limerick

Respondent:

Mr. Joseph Murphy, Connolly Sellors Geraghty Solicitors,  
6 & 7 Glentworth Street, Limerick

The determination of the Tribunal was as follows: -

The respondent, a landscaping and garden contracting business, was incorporated on 28 February 2001. The respondent employed the claimant from 6 April 2001 as a landscape operative. The respondent's position is that, by virtue of the seasonal nature of the business, it was not economically possible to maintain the claimant in employment and he was notified of redundancy on 1 December 2005 and his employment ended on 22 December 2005. The claimant's position is that he was informed on 20 December 2005 of the proposed redundancy. His position is further that the respondent employed the managing director's brother-, the second director of the respondent, on a part-time basis throughout 2005. The respondent also employed an EU worker who was let go in

November 2005 and was then replaced in early 2006. The respondent's position is that MDB was in full-time employment with another company throughout 2005 and came to work for the respondent in June 2006.

The claimant's position is that he was employed by the father of the managing director of the respondent (FMD) from the autumn of 1978 doing similar work for a broadly similar customer base. The claimant contends that there was a transfer of an undertaking on or around 6 April 2001 from FMD to the respondent. The respondent operates from the same premises as FMD and appears to utilise the same machinery. The claimant further contends that he received only one week's holiday pay over the last twelve months of his employment.

### **Determination**

The Tribunal is not satisfied that a genuine redundancy situation existed in the respondent and therefore finds that the dismissal of the claimant was unfair. The Tribunal awards €5,500-00 under the Unfair Dismissals Acts, 1977 to 2001. Redundancy and unfair dismissal being mutually exclusive the claim under the Redundancy Payments Acts, 1967 to 2003 must fail. The evidence having shown that the claimant was paid one week's pay in lieu of notice and being satisfied that there was a transfer of an undertaking in 2001 the Tribunal awards €2,205-00, being seven weeks' pay under the Minimum Notice and Terms of Employment Acts, 1973 to 2001. The Tribunal awards €945-00, being three weeks' pay under the Organisation Of Working Time Act, 1997.

Sealed with the Seal of the

Employment Appeals Tribunal

This \_\_\_\_\_

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